3–7–95
Vol. 60 No. 44
Pages 12395–12658

federal register

Tuesday
March 7, 1995

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Contents

Federal Register
Vol. 60, No. 44
Tuesday, March 7, 1995

Administrative Conference of the United States
NOTICES
Meetings:
Adjudication, Administration, Governmental Processes, and Rulemaking Committees, 12533

Agricultural Marketing Service
RULES
Eggs and egg products:
Voluntary shell egg grading, 12401–12403
Raisins produced from grapes grown in California, 12403–12407
Tobacco inspection:
Growers; referendum results, 12398–12401
NOTICES
Federal claims collection, 12533–12534

Agriculture Department
See Agricultural Marketing Service
See Forest Service

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Welfare reform and combined welfare reform/Medicaid demonstration projects, 12565–12568

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 12534–12539

Corporation for National and Community Service
NOTICES
Agency information collection activities under OMB review, 12542–12543

Defense Department
RULES
Civilian health and medical program of uniformed services (CHAMPUS):
Inpatient mental health services care standards and reimbursement methods, 12419–12438
PROPOSED RULES
Acquisition regulations:
Government property; public hearing cancellation, 12530–12531

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Malone, William W., M.D., 12572

Education Department
RULES
Direct grant programs:
Improving America's Schools Act; optional procedures for FY 1995 grant competitions, 12648
NOTICES
Grants and cooperative agreements; availability, etc.:
Strengthening institutions program, 12543
Technology in education challenge grants (FY 95), 12650–12653
Selection criteria and procedures, etc., 12650–12651

Employment and Training Administration
NOTICES
Adjustment assistance:
Hanover Shoe Co., 12572
Illinois Masonic Hospital, 12572–12573
Venus Fashions, Inc., 12573
Wirekraft Industries, Inc., et al., 12573–12574
Xerox Corp., 12574

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Site Specific Advisory Board—
Savannah River Site, 12543–12544
Human Radiation Experiments Advisory Committee, 12544
Nuclear Safety External Regulation Advisory Committee, 12544–12545
Natural gas exportation and importation:
CanWest Gas Supply U.S.A., Inc., 12553
Phibro Division of Salomon Inc., 12553
Recommendations by Defense Nuclear Facilities Safety Board:
DOE safety rules, orders, and other requirements; integration, 12545

Energy Efficiency and Renewable Energy Office
NOTICES
Meetings:
Appliance and equipment energy efficiency standards; commercial office equipment energy efficiency information evaluation criteria, 12551–12552
Fluorescent lamp ballasts; engineering analysis for energy conservation standards; workshop, 12552–12553

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 12451–12453
Michigan, 12446–12451
Texas, 12438–12446
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Michigan, 12459–12478
Texas, 12453–12459
Clean Air Act:
State operating permits programs—
Illinois, 12478–12483
Hazardous waste:
State underground storage tank program approvals—
Iowa, 12630–12634

PROPOSED RULES
Air programs, etc.:
Ambient air quality standards, national and implementation plans for sulfur oxides (sulfur dioxide), 12492–12519
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Texas, 12519–12520
Air quality implementation plans; approval and promulgation; various States:
California, 12520
Texas, 12520–12521
Clean Air Act:
State operating permits programs—
Nebraska, 12521–12525
Hazardous wastes:
Identification and listing—
Dye and pigment industries, 12525
NOTICES
Drinking water:
Public water supply supervision program—
Puerto Rico, 12553–12554
Meetings:
Common sense initiative—
Iron and steel sector, 12554
Gulf of Mexico Program Citizens Advisory Committee, 12554
Multi-Agency Radiation Site Investigation Manual Development Working Group, 12555
Water pollution control:
National pollutant discharge elimination system; State programs—
Louisiana and Texas, 12555–12556

Executive Office of the President
See Management and Budget Office
See National Education Goals Panel
See Presidential Documents
See Trade Representative, Office of United States

Export-Import Bank
NOTICES
Agency information collection activities under OMB review, 12556–12557

Federal Aviation Administration
RULES
Airworthiness directives:
Beech, 12406–12407
Boeing, 12410–12411
British Aerospace, 12407–12408, 12413–12414
Pilatus Britten-Norman, 12408–12410
Rolls-Royce plc, 12411–12413
Textron Lycoming, 12414–12415

Federal Communications Commission
PROPOSED RULES
Common carrier services:
Computer III further remand proceedings; Bell Operating Company; enhanced services provision, 12529–12530
Radio stations; table of assignments:
Michigan, 12530

Federal Deposit Insurance Corporation
NOTICES
Agency information collection activities under OMB review, 12557–12559

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Montaup Electric Co. et al., 12545–12547
Environmental statements; availability, etc.:
Alabama Power Co., 12548
Meetings:
Central Nebraska Public Power and Irrigation District et al., 12548
Natural gas certificate filings:
Columbia Gas Transmission Corp. et al., 12548–12549
Applications, hearings, determinations, etc.:
Alabama-Tennessee Natural Gas Co., 12549
Colorado Interstate Gas Co., 12549
Gas Research Institute, 12549–12550
MidAmerican Energy Co., 12550
Mojave Pipeline Co., 12550
Southern Company Services, Inc., 12551
Texas Eastern Transmission Corp., 12551
Transcontinental Gas Pipe Line Corp., 12551

Federal Reserve System
NOTICES
Agency information collection activities under OMB review; correction, 12592
Federal Reserve bank services:
Payments system risk; daylight overdrafts; fee charges to depository institutions, 12559–12563
Meetings; Sunshine Act, 12591
Applications, hearings, determinations, etc.:
Brill Bancshares, Inc., et al., 12563
First Farmers Bancshares, Inc., 12563–12564
First Union Corp. et al., 12564
Saphir, John M., et al., 12564

Fish and Wildlife Service
RULES
Endangered and threatened species:
Gesneria pauciflora, 12483–12487
PROPOSED RULES
Endangered and threatened species:
San Jacinto Valley crownscale, etc. (four southwestern California plants), 12531–12532

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Washington; correction, 12592

Forest Service
NOTICES
Meetings:
Ecosystem Management Workshop Planning Group, 12534

General Accounting Office
NOTICES
Meetings:
Federal Accounting Standards Advisory Board, 12564–12565

Health and Human Services Department
See Children and Families Administration
See Health Resources and Services Administration
See Public Health Service

Health Resources and Services Administration
NOTICES
Meetings; advisory committees:
March, 12568–12569

Housing and Urban Development Department
RULES
Low income housing:
Housing assistance payments (Section 8)—
Contract rent annual adjustment factors, 12594–12628
NOTICES
Low income housing:
Housing assistance payments (Section 8)—
Service coordinator funds (1995 FY); correction, 12569

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Indian Gaming Commission
See National Park Service

Internal Revenue Service
RULES
Income taxes:
Cash or deferred arrangements and employee and matching contributions under employee plans; correction, 12415–12416

International Trade Administration
NOTICES
Antidumping and countervailing duties:
Administrative review requests, 12540–12541

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Burlington Northern Railroad Co., 12571
Georgia Transportation Department, 12571–12572

Justice Department
See Drug Enforcement Administration

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration
See Occupational Safety and Health Administration

Land Management Bureau
RULES
Public land orders:
Wyoming; correction, 12592

Management and Budget Office
RULES
Conflict of interests, 12396–12398
NOTICES
Audit of Federal operations and programs (Circular A–73); rescission, 12581–12582
Budget rescissions and deferrals, 12636–12645

Mine Safety and Health Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Elimination of pneumonoconiosis among coal miners; advisory committee, 12574
Program policy letters:
Workplace examinations; correction, 12592

National Education Goals Panel
NOTICES
Meetings, 12574–12575

National Indian Gaming Commission
NOTICES
Indian Gaming Regulatory Act:
Class III tribal gaming ordinances; approval, 12575

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 12487
South Atlantic snapper-grouper; correction, 12592
Marine sanctuaries:
Olympic Coast National Marine Sanctuary, WA
Correction, 12592
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 12541
Pacific Fishery Management Council, 12541–12542
Western Pacific Fishery Management Council, 12542

National Park Service
NOTICES
Environmental statements; availability, etc.:
Creve Coeur Lake Memorial Park, MO, 12569–12570
Meetings:
Gettysburg National Military Park Advisory Commission, 12570
National Register of Historic Places:
Pending nominations, 12570–12571

Neighborhood Reinvestment Corporation
NOTICES
Meetings; Sunshine Act, 12591

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Cleveland Electric Illuminating Co. et al., 12575–12576
Meetings:
Nuclear Waste Advisory Committee, 12576–12577
Regulatory information conference, 12577
Meetings; Sunshine Act, 12591
Petitions; Director's decisions:
Northeast Utilities, 12577–12578
Applications, hearings, determinations, etc.:
Babcock & Wilcox Co., 12578–12581

Occupational Safety and Health Administration
RULES
State plans; development, enforcement, etc.:
Hawaii, 12417–12419
North Carolina, 12416–12417
PROPOSED RULES
State plans; development, enforcement, etc.:
North Carolina, 12488–12490

Office of Management and Budget
See Management and Budget Office

Office of United States Trade Representative
See Trade Representative, Office of United States

Personnel Management Office
RULES
Prevailing rate systems, 12395–12396

Postal Service
PROPOSED RULES
Domestic Mail Manual:
Special bulk third-class eligibility restrictions, 12490–12492

Presidential Documents
PROCLAMATIONS
Special observances:
Save Your Vision Week (Proc. 6774), 12657–12658

Public Health Service
See Health Resources and Services Administration
PROPOSED RULES
Fellowships, internships, training:
National Institute of Environmental Health Sciences Hazardous Substances Basic Research and Training Grants, 12525–12529

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 12583–12585
Philadelphia Depository Trust Co., 12585–12586
Applications, hearings, determinations, etc.:
Jackson National Life Insurance Co. of Michigan et al., 12586–12588

Selective Service System
NOTICES
Agency information collection activities under OMB review, 12588

Small Business Administration
NOTICES
Disaster loan areas:
Alabama, 12588
North Carolina et al., 12588–12589

Trade Representative, Office of United States
NOTICES
Intellectual property rights protection, countries denying; policies and practices:
China, 12582–12583

Transportation Department
See Federal Aviation Administration

Treasury Department
See Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 12589–12590

Separate Parts In This Issue

Part II
Department of Housing and Urban Development, 12594–12628

Part III
Environmental Protection Agency, 12630–12634

Part IV
Office of Management and Budget, 12636–12645

Part V
Department of Education, 12648

Part VI
Department of Education, 12650–12653

Part VII
The President, 12657–12658

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

6774 12657

5 CFR

532 (2 documents) 12395, 12396

1300 12396

Ch. LXXVII 12396

7 CFR

29 (4 documents) 12398, 12399, 12400

56 12401

989 12403

14 CFR

39 (7 documents) 12406, 12407, 12408, 12410, 12411, 12413, 12414

15 CFR

925 12592

24 CFR

888 12594

26 CFR

1 12415

29 CFR

1952 (2 documents) 12416, 12417

Proposed Rules:

1952 12488

32 CFR

199 12419

34 CFR

75 12648

39 CFR

Proposed Rules:

111 12490

40 CFR

52 (6 documents) 12438, 12442, 12446, 12451, 12453, 12459

70 12478

81 (2 documents) 12453, 12459

281 12630

282 12630

Proposed Rules:

51 12492

52 (3 documents) 12519, 12520

58 12492

70 12521

81 12520

261 (2 documents) 12525

271 (2 documents) 12525

302 (2 documents) 12525

42 CFR

Proposed Rules:

65a 12525

43 CFR

Public Land Orders:

7100 12592

47 CFR

Proposed Rules:

64 12529

73 12530

48 CFR

Proposed Rules:

45 12530

52 12530

50 CFR

17 12483

646 12592

675 12487

Proposed Rules:

17 12531

Rules and Regulations

Federal Register
Vol. 60, No. 44
Tuesday, March 7, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AG46

Prevailing Rate Systems; Redefinition of Scranton-Wilkes-Barre, PA; Harrisburg, PA; Washington, DC; and Waco, TX, Wage Areas

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to remove Schuylkill County, PA, from the Scranton-Wilkes-Barre, PA, Federal Wage System wage area and reassign the county to the Harrisburg, PA, area of application. This rule also moves Adams County and Perry County, PA, from the Harrisburg survey area to the Harrisburg area of application. Additionally, this rule adds Manassas and Manassas Park, two independent cities in Virginia, to the Washington, DC, FWS wage area definition. This rule also corrects a printing error by reinserting McLennan County, TX, in the Waco, TX, FWS wage area listing.

EFFECTIVE DATE: April 6, 1995.

FURTHER INFORMATION CONTACT: Mark Allen, (202) 606–2848.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is currently engaged in an ongoing system-wide review of the geographic definitions of Federal Wage System (FWS) appropriated fund wage areas. On December 28, 1994, OPM published a proposed rule (59 FR 66795) communicating changes and technical corrections in FWS wage area definitions. The proposed rule provided a 30-day period for public comment. OPM received no comments during the comment period. Therefore, the proposed rule is being adopted as a final rule without any changes.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix C to subpart B is amended by revising the wage area listings for Washington, District of Columbia; Harrisburg, Pennsylvania; Scranton-Wilkes-Barre, Pennsylvania; and Waco, Texas; to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

District of Columbia, Washington, DC

Survey Area

District of Columbia:
  Washington, D.C.
Maryland:
  Charles
  Federick
  Montgomery
  Prince George's
Virginia (cities):
  Alexandria
  Fairfax
  Falls Church
  Manassas
  Manassas Park
Virginia (counties):
  Arlington
  Fairfax
  Loudoun
  Prince William

Area of Application. Survey area plus:

Maryland:
  Calvert
  St. Mary's
Virginia:
  Fauquier
  King George
  Stafford

* * * * *

Pennsylvania, Harrisburg

Survey Area

Pennsylvania:
  Cumberland
  Dauphin
  Lebanon
  York

Area of Application. Survey area plus:

Pennsylvania:
  Adams
  Berks
  Juniata
  Lancaster
  Lycoming [19]
  Mifflin
  Montour
  Northumberland
  Perry
  Schuylkill
  Snyder
  Union

* * * * *

Scranton-Wilkes-Barre

Survey Area

Pennsylvania:
  Lackawanna
  Luzerne
  Monroe

Area of Application. Survey area plus:

Pennsylvania:
  Bradford
  Carbon
  Columbia
  Lycoming [20]
  Pike
  Sullivan
  Susquehanna
  Tioga
  Wayne
  Wyoming

* * * * *

Texas

* * * * *

Waco

Survey Area

Texas:
  Bell
  Coryell
  McLennan

Area of Application. Survey area plus:

Texas:
  Anderson

[19] Allenwood Federal Prison Camp portion only.
[20] Excluding Allenwood Federal Prison Camp.

Bosque
Brazos
Falls
Freestone
Hamilton
Hill
Leon
Limestone
Mills
Robertson

* * * * *

[FR Doc. 95–5453 Filed 3–6–95; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 532

RIN 3206–AG44

Prevailing Rate Systems; Abolishment of Cook, IL, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to abolish the Cook, IL, nonappropriated fund (NAF) Federal Wage System wage area and add Cook County, IL, as an area of application to the Lake, IL, NAF wage area for pay-setting purposes.

EFFECTIVE DATE: April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: On November 23, 1994, the Office of Personnel Management (OPM) published an interim rule to abolish the Cook, IL, nonappropriated fund (NAF) Federal Wage System wage area and add Cook County, IL, as an area of application to the Lake, IL, NAF wage area for pay-setting purposes. The interim rule provided a 30-day period for public comment. OPM received no comments during the comment period. Therefore, the interim rule is being adopted as a final rule.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule amending 5 CFR part 532 published on November 23, 1994 (59 FR 60293), is adopted as final without any changes.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–5452 Filed 3–6–95; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF MANAGEMENT AND BUDGET

5 CFR Part 1300 and Chapter LXXVII

RIN 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Office of Management and Budget

AGENCY: Office of Management and Budget (OMB).

ACTION: Final rule.

SUMMARY: The Office of Management and Budget, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for employees of the OMB that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE with a requirement for prior approval of outside employment. The Office of Management and Budget also is repealing its old standards of conduct regulations and is inserting in their place a cross-reference to the new provisions and to applicable executive branch-wide standards of ethical conduct, as well as to applicable financial disclosure regulations.

EFFECTIVE DATE: These regulations are effective on March 7, 1995.

FOR FURTHER INFORMATION CONTACT: Darrell A. Johnson, OMB Designated Agency Ethics Official (DAEO), (202) 395–5715, or McGavock D. Reed, OMB Alternate DAEO, (202) 395–3563.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published new Standards of Ethical Conduct for Employees of the Executive Branch (Standards). See 57 FR 35006–35067, as corrected at 57 FR 48557 and 57 FR 52583, with additional grace period extensions at 59 FR 4779–4780 and 60 FR 6390–6391. The Standards, codified at 5 CFR part 2635 and effective February 3, 1993, established uniform standards of ethical conduct that apply to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. With OGE's concurrence, OMB has determined that the following supplemental regulations, being codified in new 5 CFR chapter LXXVII, consisting of part 8701, are necessary to the success of its ethics program. The Office of Management and Budget is simultaneously repealing its superseded Standards of Conduct at 5 CFR part 1300 and is replacing those provisions with a single section that provides cross-references to 5 CFR parts 2634 and 2635, and to OMB's new supplemental regulations.

II. Analysis of the Regulations

Section 8701.101 General

Section 8701.101 explains that the regulations contained in the final rule will apply to all OMB employees and are supplemental to the executive branch-wide standards. Employees of OMB also are subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635 and the executive branch financial disclosure regulations at 5 CFR part 2634.

Section 8701.102 Prior Approval for Outside Employment

Under 5 CFR 2635.803, agencies may, by supplemental regulation, require employees to obtain prior approval before engaging in outside employment. Under 5 CFR 1300.735–15(b) which is now being revoked, OMB employees have long been required to obtain advance approval for outside employment, and OMB has determined that it is necessary to the administration of its ethics program to continue to require that employees obtain prior approval before engaging in outside employment. New paragraph 8701.102, therefore, continues the basic requirement for prior approval of outside employment. By adding a definition of ''employment,'' however, it clarifies the circumstances under which prior approval must be obtained and, by specifying the information to be provided as part of the employee's request, it provides additional guidance for employees who are required to submit requests for approval.

Whereas 5 CFR 1300.735–15(b) had specified that approval was to be obtained from the Assistant to the Director for Administration, section 8701.102 contains a multiple approval requirement. In addition to the approval of his or her division of office head, the employee must obtain the approval of the OMB General Counsel, as well as that of the designated agency ethics official.

The standard to be used in approving or denying requests for approval of outside employment is set forth at section 8701.102(b), in part, to highlight

the fact that section 8701.102 does not itself provide a basis to deny any OMB employee's request for approval. The basis for disapproval, if any, must be found in applicable statutes or the executive branch-wide Standards.

III. Repeal of the Old OMB Standards of Conduct Regulations

Because the OMB's Standards of Conduct have been largely superseded by the new executive branch financial disclosure regulations at 5 CFR parts 2634 and by the new executive branch-wide Standards at 5 CFR part 2635 as supplemented by the regulations contained in new 5 CFR part 8701, OMB is repealing all of existing 5 CFR part 1300. To ensure that employees are on notice of the ethical standards to which they are subject, the OMB is replacing its old standards at 5 CFR part 1300 with a residual provision that cross-references 5 CFR parts 2634, 2635 and 8701.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

The Office of Management and Budget has found that good cause exists under 5 U.S.C. 553(b) and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30 day delay in effectiveness as to this final rule and repeal. This supplemental regulation is essentially a restatement of a rule previously contained in the OMB Standards of Conduct. Furthermore, this rulemaking is related to the OMB organization, procedure and practice.

Executive Order 12866

In promulgating this final rule, OMB has adhered to the regulatory philosophy and the applicable principles of regulations set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation is not deemed ''significant'' under that Executive order.

Regulatory Flexibility Act

The Office of Management and Budget has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant impact on small business entities because it affects only OMB employees.

Paperwork Reduction Act

The Office of Management and Budget has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements.

Environmental Impact

This decision will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

List of Subjects

5 CFR Part 1300

Conflict of interest, Government employees.

5 CFR Part 8701

Conflict of interests, Executive branch standards of conduct, Government employees.

Dated: February 7, 1995.

Robert G. Damus,

General Counsel, Office of Management and Budget.

Approved: February 13, 1995.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Management and Budget, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations as follows:

TITLE 5—[AMENDED]

5 CFR CHAPTER III—OFFICE OF MANAGEMENT AND BUDGET

1. Part 1300 of 5 CFR chapter III is revised to read as follows:

PART 1300—STANDARDS OF CONDUCT

§ 1300.1 Cross-reference to employees ethical conduct standards and financial disclosure regulations.

Employees of the Office of Management and Budget are subject to the executive branch-wide standards of ethical conduct at 5 CFR part 2635, OMB's regulations at 5 CFR part 8701 which supplement the executive branch-wide standards, and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

Authority: 5 U.S.C. 7301.

2. A new chapter LXXVII, consisting of part 8701, is added to title 5 of the Code of Federal Regulations to read as follows:

5 CFR CHAPTER LXXVII—OFFICE OF MANAGEMENT AND BUDGET

PART 8701—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE OFFICE OF MANAGEMENT AND BUDGET

Section 8701.101 General.
Section 8701.102 Prior approval for outside employment.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp. p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.803.

§ 8701.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to the employees of the Office of Management and Budget and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the standards in 5 CFR part 2635 and this part, OMB employees are subject to the executive branch financial disclosure regulations contained in 5 CFR part 2634.

§ 8701.102 Prior approval for outside employment.

(a) Before engaging in outside employment with or without compensation, an employee of the Office of Management and Budget, other than a special Government employee, must obtain the written approval of his or her division or office head, the General Counsel, and the Designated Agency Ethics Official (DAEO). Requests for approval shall be forwarded through normal supervisory channels to the division or office head, who shall forward the request to the General Counsel, to be forwarded with their successive approvals to the DAEO. The request for approval shall include, at a minimum, the following:

(1) A statement of the name of the person, group, or other organization for whom the work is to be performed; the type of work to be performed; and the proposed hours of work and approximate dates of employment; and

(2) A statement that the outside employment will not depend on information obtained as a result of the employee's official Government position and that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment.

(b) Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(c) For purposes of this section, ''employment'' means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher or speaker. It includes writing

when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless such activities involve the provision of professional services or advice or are for compensation other than reimbursement of expenses.

[FR Doc. 95–5553 Filed 3–6–95; 8:45 am]

BILLING CODE 3110–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB–94–35]

Tobacco Inspection; Growers' Referendum Results

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document contains the determination with respect to the referendum on the merger of Tifton and Fitzgerald-Ocilla, Georgia, to become the consolidated market of Tifton-Fitzgerald-Ocilla. A mail referendum was conducted during the period of February 6–10, 1995, among tobacco growers who sold tobacco on these markets in 1994 to determine producer approval/disapproval of the designation of these markets as one consolidated market. Growers approved the merger. Therefore, for the 1995 and succeeding flue-cured marketing seasons, the Tifton and Fitzgerald-Ocilla, Georgia, tobacco markets shall be designated as and called Tifton-Fitzgerald-Ocilla. The regulations are amended to reflect this new designated market.

EFFECTIVE DATE: April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, PO. Box 96456, Washington, DC. 20090–6456; telephone number (202) 205–0567.

SUPPLEMENTARY INFORMATION: A notice was published in the February 2, 1995, issue of the Federal Register (60 FR 6452–53) announcing that a referendum would be conducted among active flue-cured producers who sold tobacco on either Tifton or Fitzgerald-Ocilla, during the 1994 season to ascertain if such producers favored the consolidation.

The notice of referendum announced the determination by the Secretary that the consolidated market of Tifton-Fitzgerald-Ocilla, Georgia, would be designated as a flue-cured tobacco auction market and receive mandatory Federal grading of tobacco sold at auction for the 1995 and succeeding seasons, subject to the results of the referendum. The determination was based on the evidence and arguments presented at a public hearing held in Ocilla, Georgia, on November 7, 1994, pursuant to applicable provisions of the regulations issued under the Tobacco Inspection Act, as amended. The referendum was held in accordance with the provisions of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations set forth in 7 CFR 29.74.

Ballots for the February 6–10 referendum were mailed to 152 producers. Approval required votes in favor of the proposal by two-thirds of the eligible voters who cast valid ballots. The Department received a total of 45 responses: 41 eligible producers voted in favor of the consolidation; 1 eligible producer voted against the consolidation; and 3 ballots were determined to be invalid.

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12788, Civil Justice Reform. This action is not intended to have retroactive effect. The final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Additionally, in conformance with the provisions of Public Law 96–354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business. Most tobacco producers and many tobacco warehouses are small businesses as defined in the Regulatory Flexibility Act. This action will not substantially affect the normal movement of the commodity in the marketplace. The Administrator has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 29

Administrative practices and procedures, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping procedures, Tobacco.

For the reasons set forth in the preamble, 7 CFR part 29, subpart D, is amended as follows:

PART 29—[AMENDED]

Subpart D—Order of Designation of Tobacco Markets

1. The authority citation for 7 CFR part 29, subpart D, continues to read as follows:

Authority: Sec. 5, 49 Stat. 732, as amended by sec. 157(a) (1), 95 Stat. 374 (7 U.S.C. 511d).

§ 29.8001 [Amended]

2. In § 29.8001, the table is amended by adding a new entry (hhh) to read as follows:

Territory	Types of tobacco	Auction markets	Order of designation	Citation
* * *	*	*	* * *	
(hhh) Georgia	flue-cured	Tifton-Fitzgerald-Ocilla		April 6, 1995.

Dated: March 1, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–5538 Filed 3–6–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 29

[TB–94–37]

Tobacco Inspection; Growers' Referendum Results

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document contains the determination with respect to the referendum on the merger of Kingstree and Hemingway, South Carolina, to become the consolidated market of Kingstree-Hemingway. A mail referendum was conducted during the

period of February 6–10, 1995, among tobacco growers who sold tobacco on these markets in 1994 to determine producer approval/disapproval of the designation of these markets as one consolidated market. Growers approved the merger. Therefore, for the 1995 and succeeding flue-cured marketing seasons, the Kingstree and Hemingway, South Carolina, tobacco markets shall be designated as and called Kingstree-Hemingway. The regulations are amended to reflect this new designated market.

EFFECTIVE DATE: April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Washington, DC 20090–6456; telephone number (202) 205–0567.

SUPPLEMENTARY INFORMATION: A notice was published in the February 2, 1995, issue of the Federal Register (60 FR 6453–54) announcing that a referendum would be conducted among active flue-cured producers who sold tobacco on either Kingstree or Hemingway, during the 1994 season to ascertain if such producers favored the consolidation.

The notice of referendum announced the determination by the Secretary that the consolidated market of Kingstree-Hemingway, South Carolina, would be designated as a flue-cured tobacco auction market and receive mandatory Federal grading of tobacco sold at auction for the 1995 and succeeding seasons, subject to the results of the referendum. The determination was based on the evidence and arguments presented at a public hearing held in Kingstree, South Carolina, on November 9, 1994, pursuant to applicable provisions of the regulations issued under the Tobacco Inspection Act, as amended. The referendum was held in accordance with the provisions of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations set forth in 7 CFR 29.74.

Ballots for the February 6–10 referendum were mailed to 520 producers. Approval required votes in favor of the proposal by two-thirds of the eligible voters who cast valid ballots. The Department received a total of 207 responses: 185 eligible producers voted in favor of the consolidation; 17 eligible producers voted against the consolidation; and 5 ballots were determined to be invalid.

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12788, Civil Justice Reform. This action is not intended to have retroactive effect. The final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Additionally, in conformance with the provisions of Public Law 96–354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business. Most tobacco producers and many tobacco warehouses are small businesses as defined in the Regulatory Flexibility Act. This action will not substantially affect the normal movement of the commodity in the marketplace. The Administrator has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 29

Administrative practices and procedures, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping procedures, Tobacco.

For the reasons set forth in the preamble, 7 CFR part 29, subpart D, is amended as follows:

PART 29—[AMENDED]

Subpart D—Order of Designation of Tobacco Markets

1. The authority citation for 7 CFR Part 29, Subpart D, continues to read as follows:

Authority: Sec. 5, 49 Stat. 732, as amended by sec. 157(a) (1), 95 Stat. 374 (7 U.S.C. 511d).

§ 29.8001 [Amended]

2. In § 29.8001, the table is amended by adding a new entry (iii) to read as follows:

Territory	Types of tobacco	Auction markets	Order of designation	Citation
* * *	*	*	*	*
(iii) South Carolina	flue-cured	Kingstree-Hemingway		April 6 1995.

Dated: March 1, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–5539 Filed 3–6–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 29

[TB–94–36]

Tobacco Inspection; Growers' Referendum Results

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document contains the determination with respect to the referendum on the merger of Clarkton and Chadbourn, North Carolina, to become the consolidated market of Clarkton-Chadbourn. A mail referendum was conducted during the period of February 6–10, 1995, among tobacco growers who sold tobacco on these markets in 1994 to determine producer approval/disapproval of the designation of these markets as one consolidated market. Growers approved the merger. Therefore, for the 1995 and succeeding flue-cured marketing seasons, the Clarkton and Chadbourn, North Carolina, tobacco markets shall be designated as and called Clarkton-Chadbourn. The regulations are amended to reflect this new designated market.

EFFECTIVE DATE: April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, PO. Box 96456, Washington, DC. 20090–6456; telephone number (202) 205–0567.

SUPPLEMENTARY INFORMATION: A notice was published in the February 2, 1995, issue of the Federal Register (60 FR 6452) announcing that a referendum would be conducted among active flue-cured producers who sold tobacco on either Clarkton or Chadbourn, during the 1994 season to ascertain if such producers favored the consolidation.

The notice of referendum announced the determination by the Secretary that the consolidated market of Clarkton-Chadbourn, North Carolina, would be designated as a flue-cured tobacco auction market and receive mandatory, Federal grading of tobacco sold at auction for the 1995 and succeeding

seasons, subject to the results of the referendum. The determination was based on the evidence and arguments presented at a public hearing held in Fair Bluff, North Carolina, on November 10, 1994, pursuant to applicable provisions of the regulations issued under the Tobacco Inspection Act, as amended. The referendum was held in accordance with the provisions of the Tobacco Inspection Tobacco Act, as amended (7 U.S.C. 511d) and the regulations set forth in 7 CFR 29.74.

Ballots for the February 6–10 referendum were mailed to 735 producers. Approval required votes in favor of the proposal by two-thirds of the eligible voters who cast valid ballots. The Department received a total of 308 responses: 293 eligible producers voted in favor of the consolidation; 6 eligible producers voted against the consolidation; and 9 ballots were determined to be invalid.

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12788, Civil Justice Reform. This action is not intended to have retroactive effect. The final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Additionally, in conformance with the provisions of Pub. L. 96–354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business. Most tobacco producers and many tobacco warehouses are small businesses as defined in the Regulatory Flexibility Act. This action will not substantially affect the normal movement of the commodity in the marketplace. The Administrator has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 29

Administrative practices and procedures, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping procedures, Tobacco.

For the reasons set forth in the preamble, 7 CFR Part 29, subpart D, is amended as follows:

PART 29—[AMENDED]

Subpart D—Order of Designation of Tobacco Markets.

1. The authority citation for 7 CFR Part 29, Subpart D, continues to read as follows:

Authority: Sec. 5, 49 Stat. 732, as amended by sec. 157(a) (1), 95 Stat. 374 (7 U.S.C. 511d).

§ 29.8001 [Amended]

2. In § 29.8001, the table is amended by adding a new entry (jjj) to read as follows:

Territory	Types of tobacco	Auction markets	Order of designation	Citation
*	*	*	*	*
(jjj) North Carolina	flue-cured	Clarkton-Chadbourn	April 6, 1995.	

Dated: March 1, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–5540 Filed 3–6–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 29

[TB–94–32]

Tobacco Inspection; Growers' Referendum Results

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document contains the determination with respect to the referendum on the merger of Fairmont and Fair Bluff, North Carolina, to become the consolidated market of Fairmont-Fair Bluff. A mail referendum was conducted during the period of February 6–10, 1995, among tobacco growers who sold tobacco on these markets in 1994 to determine producer approval/disapproval of the designation of these markets as one consolidated market. Growers approved the merger. Therefore, for the 1995 and succeeding flue-cured marketing seasons, the Fairmont and Fair Bluff, North Carolina, tobacco markets shall be designated as and called Fairmont-Fair Bluff. The regulations are amended to reflect this new designated market.

EFFECTIVE DATE: April 6, 1992.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Washington, D.C. 20090–6456; telephone number (202) 205–0567.

SUPPLEMENTARY INFORMATION: A notice was published in the February 2, 1995, issue of the Federal Register (60 FR, 6453) announcing that a referendum would be conducted among active flue-cured producers who sold tobacco on either Fairmont or Fair Bluff, during the 1994 season to ascertain if such producers favored the consolidation.

The notice of referendum announced the determination by the Secretary that the consolidated market of Fairmont-Fair Bluff, North Carolina, would be designated as a flue-cured tobacco auction market and receive mandatory Federal grading of tobacco sold at auction for the 1995 and succeeding seasons, subject to the results of the referendum. The determination was based on the evidence and arguments presented at a public hearing held in Fair Bluff, North Carolina, on November 10, 1994, pursuant to applicable provisions of the regulations issued under the Tobacco Inspection Act, as amended. The referendum was held in accordance with the provisions of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations set forth in 7 CFR 29.74.

Ballots for the February 6–10 referendum were mailed to 1,100 producers. Approval required votes in favor of the proposal by two-thirds of the eligible voters who cast valid ballots. The Department received a total of 570 responses: 467 eligible producers voted in favor of the consolidation; 84 eligible producers voted against the consolidation; and 19 ballots were determined to be invalid.

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12788, Civil Justice Reform. This action is not intended to have retroactive effect. The final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Additionally, in conformance with the provisions of Public Law 96–354,

the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business. Most tobacco producers and many tobacco warehouses are small businesses as defined in the Regulatory Flexibility Act. This action will not substantially affect the normal movement of the commodity in the marketplace. The Administrator has determined that this action will not have a significant economic impact on a substantial number of small entities.

For the reasons set forth in the preamble, 7 CFR part 29, subpart D, is amended as follows:

PART 29—[AMENDED]

Subpart D—Order of Designation of Tobacco Markets.

1. The authority citation for 7 CFR Part 29, Subpart D, continues to read as follows:

Authority: Sec. 5, 49 Stat. 732, as amended by sec. 157(a) (1), 95 Stat. 374 (7 U.S.C. 511d).

29.8001 [Amended]

2. In § 29.8001, the table is amended by adding a new entry (kkk) to read as follows:

Territory	Types of tobacco	Auction markets	Order of designation	Citation
*	*	*	*	*
(kkk) North Carolina	flue-cured	Fairmont-Fair Bluff		April 6, 1995.

Dated: March 1, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–5537 Filed 3–6–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 56

[Docket No. PY–92–004]

RIN 0581–AA60

Voluntary Shell Egg Grading

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is issuing amendments to the voluntary shell egg grading regulations and standards in response to new technology and current practices in the shell egg industry and to conform to statutory requirements. The amended regulations define washed ungraded eggs and clarify the definition of a quality assurance inspector; add age and disability as types of prohibited discrimination in providing grading services; clarify the type of facilities and equipment to be supplied to a grader and the method by which cartons of eggs are to be identified; update grading room requirements to include mechanized shell egg operations and to require rinse water to be at least as warm as wash water; harmonize the standards for quality of individual shell eggs for B quality in U.S. Nest-Run grades with the U.S. Standards for Quality of Individual Shell Eggs for B quality; and delete wholesale shell egg grades and weight classes.

EFFECTIVE DATE: April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Larry W. Robinson, Chief, Grading Branch, 202–720–3271.

SUPPLEMENTARY INFORMATION:

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The AMS Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because the revisions reflect current industry production and marketing practices.

The information collection requirements that appear in § 56.17(b) and § 56.37 to be amended by the rule have been previously approved by the Office of Management and Budget and assigned OMB Control No. 0581–0128, under the Paperwork Reduction Act of 1980.

Background

Periodically the Poultry Division of AMS reviews its existing regulations. As a result of a review, it was determined that several revisions were necessary to make the shell egg standards and regulations for grading shell eggs more useful and efficient.

The grading of shell eggs by the AMS is a voluntary program, provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), and is offered on a fee-for-service basis. The grading program is designed to assist orderly marketing of shell eggs. Therefore, the standards must keep abreast of new technology and advancements in production and marketing practices.

Accordingly, AMS is amending the voluntary shell egg grading regulations to redefine ''quality assurance inspector'' to exclude from this designation a plant owner, manager, foreman, or supervisor and to clarify that the quality assurance inspector is authorized to examine product.

The amendments also define the term ''washed ungraded eggs'' to mean shell eggs which have been washed but not subject to any grading or segregation for quality.

The amendments update the regulations to comply with current statutory requirements regarding providing grading services and licensing graders without discrimination due to age or disabilities.

The facilities and equipment which the applicant furnishes the graders are expanded to include other facilities and equipment as may otherwise be required.

The amendments revise the regulations to comply with the Nutrition Labeling and Education Act of 1990.

Also revised are the existing methods of identifying cartons to require that each officially identified carton of shell eggs be lot numbered on either the carton or the consumer package.

The amendments revise the minimum facility and operating requirements for shell egg grading and packing plants by updating grading room requirements.

Shell egg cleaning operations also are revised to require that the temperature of the water used to spray rinse shell eggs be at least as warm as the water used to wash the shell eggs. Additionally, the National Supervisor is specifically authorized to approve

methods of sanitizing shell eggs other than the normal spray rinse method.

The amendments delete U.S. Wholesale Grades and Weight Classes for Shell Eggs.

The standards for B quality in U.S. Nest-Run Grades for shell eggs are amended to allow shell eggs with pronounced ridges and thin spots to be included in the maximum percentage tolerance permitted for B quality.

Comments

AMS published proposed revisions in the Federal Register (59 FR 15866) on April 5, 1994, to the Regulations Governing the Grading of Shell Eggs and U.S. Standards, Grades, and Weight Classes for Shell Eggs in 7 CFR part 56. A 60-day comment period was provided.

Three comments were received, two from State government representatives and one from a shell egg processor.

Two commenters expressed overall support of the proposal. One commenter recommended including in 7 CFR 56.37 a sentence to read that consumer packaging material for eggs manufactured prior to May 8, 1994, be excluded from the nutrition labeling requirements, defining a ''lot'' in 7 CFR 56.37, and requiring in 7 CFR part 56.76 that eggs be spray rinsed with fresh water ten degrees higher than the temperature of the wash water. AMS did not adopt these recommendations. AMS does not have the authority to authorize the use of cartons which do not conform to the Food and Drug Administration's rules and regulations. Such approval is beyond the scope of the shell egg grading regulation's authority. A ''lot'' is clearly defined in the current regulations as the consecutive day of the year in which the eggs were packed or other systems as may be approved by the Administrator. Rinse water that is at least as warm as wash water will help to reduce bacterial contamination of shell eggs without causing excessive thermal breakage. Firms always have the option to utilize a rinse water that is warmer than the wash water to the extent that their own processing operations will allow. The commenter also recommended using fresh water for the spray rinse. It was not clear what was meant by ''fresh'' water. However, all shell egg plants which utilize the Department's voluntary shell egg grading service are required to provide to AMS certification that the water used in its grading processes is potable.

The proposed method of sealing cases of eggs provided in the proposed rule specified that approximately 2–3 inch plastic or gummed tape be used to cover all seams. No comments were received on this provision. However, AMS evaluated this requirement further during the comment period and ascertained that a specific tape measurement was not necessary so long as cases were securely closed. Accordingly, AMS is making this change without an additional opportunity for comments because the change will eliminate burden and provide the flexibility to adapt to future changes in packaging material technology.

With the exception of the above change, the regulatory text contained in the proposed rule is hereby adopted.

List of Subjects 7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR part 56 is amended as follows:

PART 56—GRADING OF SHELL EGGS AND U.S. STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS

1. The authority citation for Part 56 is revised to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Section 56.1 is amended by revising the term ''quality assurance inspector'' and adding alphabetically the new term ''washed ungraded eggs'' to read as follows:

§ 56.1 Meaning of words and terms defined.

* * * * *

Quality assurance inspector means any designated company employee other than the plant owner, manager, foreman, or supervisor, authorized by the Secretary to examine product and to supervise the labeling, dating, and lotting of officially graded shell eggs and to assure that such product is packaged under sanitary conditions, graded by authorized personnel, and maintained under proper inventory control until released by an employee of the Department.

* * * * *

Washed ungraded eggs means eggs which have been washed but not sized or segregated for quality.

3. Section 56.3 is amended by revising paragraph (b) to read as follows:

§ 56.3 Administration.

* * * * *

(b) The conduct of all services and the licensing of graders under these regulations shall be accomplished without discrimination as to race, color, national origin, religion, age, sex, or disability.

* * * * *

4. Section 56.17 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 56.17 Facilities and equipment for graders.

* * * * *

(b) Furnished office space, a desk and file or storage cabinets (equipped with a satisfactory locking device), suitable for the security and storage of official stamps and supplies, and other facilities and equipment as may otherwise be required. * * *

* * * * *

5. Section 56.35 is amended by revising paragraph (c) to read as follows:

§ 56.35 Authority to use, and approval of official identification.

* * * * *

(c) *Nutritional labeling.* Nutrition information must be included with the labeling on each unit container of consumer packaged shell eggs in accordance with the provisions of Title 21, Chapter I, Part 101, Regulations for the Enforcement of the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act. The nutrition information included on labels is subject to review by the Food and Drug Administration prior to approval by the Department.

6. Section 56.36 is amended by revising the last sentence of paragraph (b)(2) to read as follows:

§ 56.36 Information required on and form of grademark.

* * * * *

(b) * * *

(2) * * * The grademark shall be printed on the carton.

7. Section 56.37 is amended by revising the first sentence to read as follows:

§ 56.37 Lot marking of officially identified product.

Each carton identified with the grademarks shown in Figures 2, 3, or 4 of § 56.36 shall be legibly lot numbered on either the carton or the consumer package. * * *

* * * * *

8. Section 56.76 is amended by revising paragraphs (b) and (e)(10), to read as follows:

§ 56.76 Minimum facility and operating requirements for shell egg grading and packing plants.

* * * * *

(b) *Grading room requirements.* (1) The egg grading or candling area shall be adequately darkened to make possible the accurate quality determination of the candled appearance of eggs. There shall be no

other light source or reflections of light that interfere with, or prohibit the accurate quality determination of eggs in the grading or candling area.

(2) The grading and candling equipment shall provide adequate light to facilitate quality determinations. Other light sources and equipment or facilities shall be provided to permit the detection and removal of stained and dirty eggs or other undergrade eggs.

(3) Adequate facilities, equipment, and light sources shall be provided to determine the condition of packing material.

(4) Egg weighing equipment shall be provided. The egg weighing equipment shall be constructed to permit cleaning; operation in a clean, sanitary manner; and shall be capable of ready adjustment.

(5) Adequate ventilation shall be provided.

* * * * *

(e) * * *

(10) Washed eggs shall be spray-rinsed with water having a temperature equal to, or warmer than, the temperature of the wash water and contain an approved sanitizer of not less than 50 p/m nor more than 200 p/m of available chlorine or its equivalent. Alternate procedures, in lieu of a sanitizer rinse, may be approved by the National Supervisor.

* * * * *

§§ 56.226, 56.227, and 56.228 [Removed and Reserved]

9. Sections 56.226, 56.227, and 56.228 are removed and reserved.

10. Section 56.230 is revised to read as follows:

§ 56.230 Grade.

''U.S. Nest-Run ____% AA Quality'' shall consist of eggs of current production of which at least 20 percent are AA quality; and the actual percentage of AA quality eggs shall be stated in the grade name. Within the maximum of 15 percent which may be below A quality, not more than 10 percent may be B quality for shell shape, pronounced ridges or thin spots, interior quality (including meat or blood spots), or due to rusty or blackish-appearing cage marks or blood stains, not more than 5 percent may have adhering dirt or foreign material on the shell ½ inch or larger in diameter, not more than 6 percent may be Checks, and not more than 3 percent may be Loss. Marks which are slightly gray in appearance and adhering dirt or foreign material on the shell less than ½ inch in diameter are not considered quality factors. The eggs shall be officially graded for all other quality factors. No case may contain less than 75 percent A quality and AA quality eggs in any combination.

11. Section 56.231 is amended by revising Table 1 to read as follows:

§ 56.231 Summary of grade.

* * * * *

	Nest-run grade, description [1]	U.S. nest-run ____ percent AA quality [2]
Minimum percentage of quality required (lot average) [3]	AA quality [4]	20
	A quality or better [5]	85
Maximum percentage tolerance permitted (15 percent lot average) [3]	B quality for shell shape, pronounced ridges or thin spots, interior quality (including blood & meat spots) or cage marks [6] and blood stains.	10
	Checks	6
	Loss	3
	Adhering dirt or foreign material ½ inch or larger in diameter	5

[1] Stains (other than rusty or blackish appearing cage marks or blood stains), and adhering dirt and foreign material on the shell less than ½ inch in diameter shall not be considered as quality factors in determining the grade designation.
[2] The actual total percentage must be stated in the grade name.
[3] Substitution of eggs of higher qualities for lower specified qualities is permitted.
[4] No case may contain less than 10 percent AA quality.
[5] No case may contain less than 75 percent A quality and AA quality eggs in any combination.
[6] Cage marks which are rusty or blackish in appearance shall be considered as quality factors. Marks which are slightly gray in appearance are not considered as quality factors.

12. Section 56.234 is amended by revising paragraph (c) to read as follows:

§ 56.234 Packaging material.

* * * * *

(c) Sealing: The tops of all cases must be securely closed, so they will not open during transportation, by applying paper gummed, plastic, or other suitable tape or by methods that would secure seams made by the closing of the top of the case. The tape shall extend down the sides and/or ends of the case a sufficient length to preclude the top flaps from opening while permitting the official identification of the case, as applicable.

Dated: March 1, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–5543 Filed 3–6–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 989

[FV95–989–1IFR]

Raisins Produced From Grapes Grown In California; Final Free and Reserve Percentages for the 1994–95 Crop Year for Zante Currant and Other Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on the establishment of final free and reserve percentages for 1994 crop Zante Currant and Other Seedless raisins. The percentages are 40 percent free and 60 percent reserve for each of these varietal types. These percentages are intended to stabilize supplies and prices and to help counter the destabilizing effects of the burdensome oversupply situation facing the raisin industry. This rule was recommended by the Raisin Administrative Committee (Committee), the body which locally administers the marketing order.

DATES: This interim final rule becomes effective March 7, 1995, and applies to all Zante Currant and Other Seedless raisins acquired from the beginning of the 1994–95 crop year. Comments which are received by April 6, 1995 will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, or faxed to 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901; or Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: 202–205–2830.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule establishes final free and reserve percentages for Zante Currant and Other Seedless raisins for the 1994–95 crop year, beginning August 1, 1994, through July 31, 1995. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 4,500 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. A minority of handlers and a majority of producers of California raisins may be classified as small entities.

The order prescribes procedures for computing trade demands and preliminary and final percentages that establish the amount of raisins that can be marketed throughout the season. The regulations apply to all handlers of California raisins. Raisins in the free percentage category may be shipped immediately to any market, while reserve raisins must be held by handlers in a reserve pool for the account of the Committee, which is responsible for local administration of the order. Under the order, reserve raisins may be: Sold at a later date by the Committee to handlers for free use; used in diversion programs; exported to authorized countries; carried over as a hedge against a short crop the following year; or disposed of in other outlets noncompetitive with those for free tonnage raisins.

While this rule may restrict the amount of Zante Currant and Other Seedless raisins that enter domestic markets, final free and reserve percentages are intended to lessen the impact of the oversupply situation facing the industry and promote stronger marketing conditions, thus stabilizing prices and supplies and improving grower returns. In addition to the quantity of raisins released under the preliminary percentages and the final percentages, the order specifies methods to make available additional raisins to handlers by requiring sales of reserve pool raisins for use as free tonnage raisins under ''10 plus 10'' offers, and authorizing sales of reserve raisins under certain conditions.

The Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specifies that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal is met by the establishment of a final percentage which releases 100 percent of the trade demand and the additional release of reserve raisins to handlers under ''10 plus 10'' offers. The ''10 plus 10'' offers are two simultaneous offers of reserve pool raisins which are made available to handlers each season. For each such offer, a quantity of raisins equal to 10 percent of the prior year's shipments is made available for free use.

Pursuant to section 989.54 of the order, the Committee met on August 15, 1994, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. The trade demand is 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use for each varietal type into all market outlets, adjusted by subtracting the carryin of each varietal type on August 1 of the current crop year and by adding to the trade demand the desirable carryout for each varietal type at the end of that crop year. As specified in section 989.154, the desirable carryout for each varietal type shall be equal to the shipments of free tonnage raisins of the prior crop year during the months of August, September, and one half of October. If

the prior year's shipments are limited because of crop conditions, the total shipments during that period of time during one of the three years preceding the prior crop year may be used. In accordance with these provisions, the Committee computed and announced a 1994–95 trade demand of 787 tons for Other Seedless raisins.

Section 989.54 of the order also authorizes the Committee to consider factors which pertain to the marketing of raisins, including an estimated trade demand which differs from the computed trade demand. At its August 15, 1994, meeting, the Committee computed a trade demand of 500 tons for Zante Currants. The Committee, however, determined that anticipated changes in the market conditions for Zante Currants warranted an estimated trade demand substantially higher than this.

Entering this season, the California raisin industry was carrying a very large supply of 1992–93 and 1993–94 crop Zante Currants and projected a record production in 1994–95. The Committee recommended actions to help handlers sell their tonnage at prices competitive with other currant prices in domestic and export markets. Because of these actions, the Committee believed that the computed trade demand was insufficient and decided to calculate its percentages based on an estimated trade demand of 2,200 tons.

When the Committee met on October 5, 1994, the field price for Zante Currants had been established, but the field price for Other Seedless raisins had not. Section 989.54(b) of the order requires the Committee to compute percentages which release 85 percent of the trade demand for varieties for which field prices have been established and 65 percent for varieties which have not. Thus, when the Committee met on that date, it computed and announced preliminary crop estimates and preliminary free and reserve percentages for Zante Currant and Other Seedless raisins which released 85 percent and 65 percent of the trade demands, respectively. The preliminary crop estimates and preliminary free and reserve percentages were as follows: 6,074 tons, 31 percent free and 69 percent reserve for Zante Currants; and 4,073 tons, 13 percent free and 87 percent reserve for Other Seedless Raisins. The Committee also authorized the Committee staff to increase the preliminary percentages to release 85 percent of the trade demands for varietal types without established field prices when the field prices were established. For Other Seedless raisins, the preliminary percentages were adjusted soon thereafter to 16 percent free and 84 percent reserve.

Also at that meeting, the Committee computed and announced preliminary crop estimates and preliminary free and reserve percentages for Dipped Seedless, Oleate and Related Seedless, Sultana, Muscat, Monukka, and Golden Seedless raisins. On January 12, 1995, the Committee decided that volume control percentages only were warranted for Zante Currant, Other Seedless, and Natural (sun-dried) Seedless raisins. The Committee delayed announcing final percentages for Natural (sun-dried) Seedless raisins until more shipment and production information was available. It determined that the supplies of the other varietal types would be less than or close enough to the computed trade demands for each of these varietals. Thus, volume control percentages would not be necessary to maintain market stability.

Pursuant to section 989.54(c), the Committee may adopt interim free and reserve percentages. Interim percentages may release less than the computed trade demand for each varietal type. Interim percentages for both Zante Currant and Other Seedless raisins of 39.75 percent free and 60.25 percent reserve were computed and announced on January 12, 1995. That action released most, but not all, of the computed trade demand for Zante Currant and Other Seedless raisins.

Under section 989.54(d) of the order, the Committee is required to recommend to the Secretary, no later than February 15 of each crop year, final free and reserve percentages which, when applied to the final production estimate of a varietal type, will tend to release the full trade demand for any varietal type.

The Committee's estimates, as of January 12, 1995, of 1994–95 production of Zante Currant and Other Seedless raisins are 5,507 and 1,973 tons, respectively. For Zante Currants, dividing the estimated trade demand of 2,200 tons by the final estimate of production results in a final free percentage of 40 percent and a final reserve percentage of 60 percent. For Other Seedless raisins, dividing the computed trade demand of 787 tons by the final estimate of production results in a final free percentage of 40 percent and a final reserve percentage of 60 percent.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the Committee's recommendations and other information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that upon good cause it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The relevant provisions of this part require that the percentages designated herein for the 1994–95 crop year apply to all Zante Currant and Other Seedless raisins acquired from the beginning of that crop year; (2) handlers are currently marketing 1994–95 crop raisins of the Zante Currant and Other Seedless varietal types and this action should be taken promptly to achieve the intended purpose of making the full trade demand available to handlers; (3) handlers are aware of this action, which was recommended by the Committee at an open meeting, and need no additional time to comply with these percentages; and (4) this interim final rule provides a 30-day period for written comments and all comments received will be considered prior to finalization of this interim final rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 989.247 is added to Subpart—Supplementary Regulations to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 989.247 Final free and reserve percentages for the 1994–95 crop year.

The final percentages for Zante Currant and Other Seedless raisins acquired by handlers during the crop year beginning on August 1, 1994, which shall be free tonnage and reserve tonnage, respectively, are designated as follows:

Percentage	Free percentage	Reserve
Zante Currant	40	60
Other Seedless	40	60

Dated: March 1, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–5542 Filed 3–6–95; 8:45 am]

BILLING CODE 3410–02–W

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–CE–07–AD; Amendment 39–9162; AD 95–04–10]

Airworthiness Directives; Beech Aircraft Corporation Models 34C, T–34C, and T–34C–1 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Beech Aircraft Corporation (Beech) Models 34C, T–34C, and T–34C–1 airplanes. This action requires replacing the eight wing attachment steel bolts and hardware with Inconel bolts and hardware. A report of the right lower aft wing attachment nut assembly separating in two pieces on a Model T–34C–1 airplane prompted this action. The actions specified by this AD are intended to prevent the wing from separating from the fuselage because of failure of this assembly.

DATES: Effective April 7, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 7, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Beech Models 34–C, T–34C, and T–34C–1 airplanes was published in the Federal Register on October 25, 1994 (59 FR 53613). The action proposed to require replacing the eight wing attachment steel bolts and hardware with Inconel bolts and hardware. Accomplishment of the proposed replacements would be in accordance with Beech Service Bulletin No. 2487, dated August 1993.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all information related to the subject discussed above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD or add any additional burden upon the public than was already proposed.

The compliance time of this AD is presented in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time compliance is the most desirable method because the unsafe condition described by this AD is caused by stress corrosion. Stress corrosion initiates as a result of airplane operation, but can continue to develop regardless of whether the airplane is in service or in storage. Therefore, to ensure that the above-referenced condition is detected and corrected on all airplanes within a reasonable period of time without inadvertently grounding any airplanes, a compliance schedule based upon calendar time instead of hours TIS is required.

The FAA estimates that 494 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 8 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $800 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $632,320. This figure is based on the assumption that no affected airplane owner/operator has accomplished the required replacement.

The Beech Aircraft Company has informed the FAA that 89 wing attachment assembly kits have been sold. Assuming that each of these kits is installed on an affected airplane, this would reduce the cost impact of the required AD upon U.S. operators of the affected airplanes by $113,920 from $632,320 to $518,400.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

95–04–10 Beech Aircraft Corporation: Amendment 39–9162; Docket No. 94–CE–07–AD.

Applicability: The following model and serial number airplanes, certificated in any

category, that have steel wing attachment assembly bolts and hardware:

Model	Serial numbers
34C	GP–1 through GP–50.
T–34C ..	GL–2 through GL–353.
T–34C–1.	GM–1 through GM–71 and GM–78 through GM–98.

Compliance: Within whichever of the following occurs later, unless already accomplished:

- Four years after airplane manufacture;
- Four years after installing a new wing attachment assembly; or
- Within the next 30 calendar days after the effective date of this AD.

To prevent the wing from separating from the fuselage because of failure of the wing attachment nut assembly, accomplish the following:

(a) Replace all eight steel wing attach bolts and hardware with Inconel bolts and hardware in accordance with the ACCOMPLISHMENT INSTRUCTIONS section in Beech Service Bulletin No. 2487, dated August 19 1993.

Note 1: Replacing all eight steel wing attach bolts and hardware with Inconel bolts and hardware as required by this AD eliminates the repetitive inspection requirements of AD 85–22–05, Amendment 39–5146, for the affected airplanes.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) The replacements required by this AD shall be done in accordance with Beech Service Bulletin No. 2487, dated August 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–9162) becomes effective on April 7, 1995.

Issued in Kansas City, Missouri, on February 14, 1995.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4367 Filed 3–6–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–132–AD; Amendment 39–9156; AD 95–04–04]

Airworthiness Directives; British Aerospace Model Avro 146–RJ70A and –RJ85A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model Avro 146–RJ70A and –RJ85A series airplanes, that requires an inspection to identify and remove certain cable terminals on the auxiliary power unit (APU) starter circuit and installation of certain new cable terminals. This amendment is prompted by a report that, during an inspection of the cable terminals on the APU starter circuit, incorrect cable terminals were found installed on these airplanes. The actions specified by this AD are intended to ensure the installation of correct starter cable terminals in the APU; incorrect cables could lead to the inability of the pilot to start the APU when needed in a situation of loss of other electrical power sources.

DATES: Effective April 6, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 6, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Holdings, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041–6039. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model Avro 146–RJ70A and –RJ85A series airplanes was published in the Federal Register on November 7, 1994 (59 FR 55383). That action proposed to require a detailed visual inspection to identify the cable terminals fitted to cables KA47 and KA48 on the APU starter circuit at terminal block KA9, removal of certain cable terminals, and installation of certain new cable terminals.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $250 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,020, or $340 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–04–04 British Aerospace Regional Aircraft Limited, Avro International Aerospace Division (Formerly British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Amendment 39–9156. Docket 94–NM–132–AD.

Applicability: Model Avro 146–RJ70A and –RJ85A airplanes, as listed in Avro International Aerospace Service Bulletin 49–40, Revision 1, dated March 17, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of electrical power to the auxiliary power unit (APU), accomplish the following:

(a) Within 5 months after the effective date of this AD, perform a detailed visual inspection to identify the cable terminals fitted to cables KA47 and KA48 in the APU starter circuit at terminal block KA9, in accordance with Avro International Aerospace Service Bulletin S.B. 49–40, Revision 1, dated March 17, 1994. If the cable terminals are identified as part number (P/N) S1007–042, prior to further flight, remove the cable terminals and install new cable terminals having P/N S1006–040, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection, removal, and installation shall be done in accordance with Avro International Aerospace Service Bulletin S.B. 49–40, Revision 1, dated March 17, 1994, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–	1–	Mar. 17, 1994.
2–4–	Original	Feb. 16, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Holdings, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041–6039. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 6, 1995.

Issued in Renton, Washington, on February 15, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4255 Filed 3–6–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–CE–10–AD; Amendment 39–9161; AD 95–04–09]

Airworthiness Directives; Pilatus Britten-Norman BN2A, BN2B, and BN2T Islander Series and BN2A Mk III Trislander Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Pilatus Britten-Norman BN2A, BN2B, and BN2T Islander and BN2A Mk III Trislander series airplanes that are equipped with a nose wheel steering disconnect system with either a Modification NB/M/503 or Modification NB/M/733 nose undercarriage unit. This action requires repetitively inspecting the nose wheel steering drive ring for cracks, and replacing any cracked drive ring. A report of the rudder pedals jamming in the central position during takeoff on one of the affected airplanes prompted this action. The actions specified by this AD are intended to

prevent failure of the nose wheel steering system because of a cracked drive ring, which, if not detected and corrected, could result in the inability to move the rudder pedals.

DATES: Effective April 14, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 14, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from Pilatus Britten-Norman Ltd, Bembridge, Isle of Wight, United Kingdom, PO35 5PR. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Delano D. Castle, Program Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830, extension 2716; facsimile (322) 230.6899; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Britten-Norman BN2A, BN2B, and BN2T Islander and BN2A Mk III Trislander series airplanes that are equipped with a nose wheel steering disconnect system with either a Modification NB/M/503 or Modification NB/M/733 nose undercarriage unit was published in the Federal Register on October 25, 1994 (59 FR 53615). The action proposed to require repetitively inspecting the nose wheel steering drive ring for cracks, and replacing any cracked drive ring. The proposed inspection would be accomplished in accordance with Pilatus Britten-Norman Service Bulletin No. BN–2/SB.214, Issue 1, dated September 23, 1993. The drive ring replacement, if necessary, would be accomplished in accordance with the applicable maintenance manual.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD or add any additional burden upon the public than was already proposed.

The FAA estimates that 15 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $900. This figure does not take into account the cost of repetitive inspections or the cost of replacing any cracked drive ring. The FAA has no way of determining how many repetitive inspections each owner/operator would incur over the life of the airplane or how many drive rings may be cracked.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

95–04–09 Pilatus Britten-Norman: Amendment 39–9161; Docket No. 94–CE–10–AD.

Applicability: BN2A, BN2B, and BN2T Islander and BN2A Mk III Trislander series airplanes, certificated in any category, that are equipped with a nose wheel steering disconnect system with either a Modification NB/M/503 or Modification NB/M/733 nose undercarriage unit.

Compliance: Required within the next 100 hours time-in-service (TIS), unless already accomplished, and thereafter at intervals not to exceed 100 hours TIS.

To prevent failure of the nose wheel steering system because of a cracked drive ring, which, if not detected and corrected, could result in the inability to move the rudder pedals, accomplish the following:

(a) Visually inspect the nose wheel steering drive ring for cracks in accordance with the ACTION section of Pilatus Britten-Norman Service Bulletin No. BN–2/SB.214, Issue 1, dated September 23, 1993. Prior to further flight, replace any cracked nose wheel steering drive ring in accordance with the applicable maintenance manual.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office (ACO), FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels ACO.

(d) The inspection required by this AD shall be done in accordance with Pilatus Britten-Norman Service Bulletin No. BN–2/SB.214, Issue 1, dated September 23, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pilatus Britten-Norman Ltd., Bembridge, Isle of Wight, United Kingdom, PO35 5PR. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City,

Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–9161) becomes effective on April 14, 1995.

Issued in Kansas City, Missouri, on February 14, 1995.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4369 Filed 3–6–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–153–AD; Amendment 39–9160; AD 95–04–08]

Airworthiness Directives; Boeing Model 747–300 and –400 Series Airplanes Equipped With BFGoodrich Stretched Upper Deck Evacuation Slides, Part Number 7A1323–( )

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 747–300 and –400 series airplanes equipped with certain stretched upper deck evacuation slides manufactured by BFGoodrich series airplanes. This amendment requires modification of the slide's main restraint strap, regulator assembly, and turbo fan flapper retaining roll pins. This amendment is prompted by reports of loss of air pressure and non-inflation of the inflatable tubes of the slide due to problems associated with the restraint strap, regulator assembly, and turbo fan flapper retaining roll pins. The actions specified by this AD are intended to prevent loss of air pressure or non-inflation of the inflatable tubes of the slide, which could impede the successful evacuation of passengers from the airplane during an emergency.

DATES: Effective April 6, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 6, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from BFGoodrich Company, Aircraft Evacuation Systems, Dept. 7916, Phoenix, Arizona 85040. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, Systems & Equipment Branch, ANM–130L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (310) 627–5338; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Boeing Model 747–300 and –400 series airplanes equipped with BFGoodrich stretched upper deck evacuation slides, Part Number 7A1323–( ), was published in the Federal Register on November 30, 1994 (59 FR 61296). That action proposed to require modification of the slide's main restraint strap, regulator assembly, and turbo fan flapper retaining roll pins.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Three commenters support the proposal.

One commenter requests that the description of the report that prompted the proposal be clarified. The preamble to the notice stated that the proposed action was based, in part, on a report indicating that, ''during deployment of the slide, the turbo fan flapper retaining roll pin broke, allowing the flapper to fall out.'' The commenter wishes to clarify that the reported incident occurred during the deployment of a slide that was equipped with roll pins that are common to those used on the stretched upper deck escape slide; however, there have been no reports of roll pins breaking during deployment of stretched upper deck slides that are the subject of the proposed rule. The FAA acknowledges this clarification.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this long-standing requirement.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the addition of the clarifying note previously described. The FAA has determined that the addition of the clarifying note will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 900 BFGoodrich stretched upper deck evacuation slides of the affected design installed on Boeing Model 747 series airplanes worldwide. The FAA estimates that 100 of these slides are installed on airplanes of U.S. registry that are affected by this AD. It will take approximately 4.5 work hours per slide to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,402 per slide assembly. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $167,200, or $1,672 per slide.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–04–08 Boeing: Amendment 39–9160. Docket 94–NM–153–AD

Applicability: Model 747–300 and –400 series airplanes equipped with BFGoodrich stretched upper deck evacuation slides, part number (P/N) 7A1323–1, –2, –3, –4, –105, –106, –107, –108, –109, or –110; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of air pressure or non-inflation of the inflation tubes of an evacuation slide, which could impede the evacuation of passengers from the airplane during an emergency, accomplish the following:

(a) Within 36 months after the effective date of this AD, modify the BFGoodrich stretched upper deck evacuation slide, P/N 7A1323-( ), in accordance with the Accomplishment Instructions of BFGoodrich Service Bulletin 7A1323–25–266, Revision 1, dated September 30, 1994.

Note 2: Installation of the ''product improvements,'' specified in paragraph 2.J. of the Accomplishment Instructions of the service bulletin, is not required by this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with BFGoodrich Service Bulletin 7A1323–25–266, Revision 1, dated September 30, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from BFGoodrich Company, Aircraft Evacuation Systems, Dept. 7916, Phoenix , Arizona 85040. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 6, 1995.

Issued in Renton, Washington, on February 16, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4378 Filed 3–6–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–ANE–40; Amendment 39–9154; AD 95–04–02]

Airworthiness Directives; Rolls-Royce, plc RB211–524 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Rolls-Royce, plc RB211–524 series turbofan engines, that requires a one-time modification of the nozzle guide vane (NGV) assembly to incorporate vane core reinforcement inserts which would prevent release of the stage 2 NGV seal ring, rotor contact, and severance of the rotor drive arm. This amendment is prompted by a report of an uncontained stage 1 low pressure turbine failure. The actions specified by this AD are intended to prevent release of the stage 2 NGV seal ring, which could result in an uncontained engine failure.

DATES: Effective May 8, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 8, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls-Royce, plc, P.O. Box 31, Derby, England DE2 8BJ; telephone 44–332–242424, 44–332–249936. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7148, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Rolls-Royce, plc (R–R) RB211–524 series turbofan engines was published in the Federal Register on October 4, 1993 (58 FR 51585). That action proposed to require a one-time modification of the nozzle guide vane (NGV) assembly to incorporate vane core reinforcement inserts which would prevent release of the stage 2 NGV seal ring, rotor contact, and severance of the rotor drive arm in accordance with R–R Mandatory Service Bulletin (SB) No. RB.211–72–9672, Revision 1, dated November 6, 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter concurs with the rule as proposed.

One commenter states that the proposed rule should provide separate compliance times for spare engines. The commenter further states that the proposed rule notes that no U.S. registry engines would be affected. The commenter has one affected spare engine, and states that an acceptable

level of safety would be maintained provided the spare engine is modified within 20 months of installation. The FAA concurs in part. The FAA has revised the economic analysis of this final rule to include the one domestic spare engine. However, the FAA does not concur with the proposal to require modifying spare engines within 20 months after installation on Lockheed L–1011 aircraft, or at the next shop visit. The FAA has determined that the acceptable level of safety maintained by this AD is based on total fleet compliance within a finite period after AD issuance. The commenter's proposal to modify spare engines within 20 months after installation or at the next shop visit could allow indefinite operation of unmodified engines, if an engine were removed for use as a spare engine and subsequently installed without undergoing a shop visit. Therefore, the FAA concludes that the compliance timetable originally provided in the NPRM is appropriate to maintain an acceptable level of safety.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 300 R–R RB211–524 series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 1 spare engine of U.S. registry will be affected by this AD, that it will take approximately 37 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $2,420 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,640.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–04–02 Rolls-Royce, plc: Amendment 39–9154. Docket 93–ANE–40.

Applicability: Rolls-Royce, plc (R–R) Models RB211–524B–02, –524B–B–02, –524B3–02, –524B2–19, –524B2–B–19, –524C2–19, and –524C2–B–19 turbofan engines, installed on but not limited to Boeing 747 series and Lockheed L–1011 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent release of the stage 2 nozzle guide vane (NGV) seal ring, which could result in an uncontained engine failure, accomplish the following:

(a) For engines installed on Boeing 747 series aircraft, modify the NGV assembly in accordance with R–R Mandatory Service Bulletin (SB) No. RB.211–72–9672, Revision 1, dated November 6, 1992, at the next shop visit, but not later than 9 months after the effective date of this airworthiness directive (AD), whichever occurs first.

(b) For engines installed on Lockheed L–1011 series aircraft, modify the NGV assembly in accordance with R–R Mandatory SB No. RB.211–72–9672, Revision 1, dated November 6, 1992, at the next shop visit, but not later than 20 months after the effective date of this AD, whichever occurs first.

(c) For the purpose of this AD, a shop visit is defined as an engine removal where engine maintenance entails separation of pairs of mating engine flanges or the removal of a disk, hub, or spool.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(f) The modification shall be done in accordance with the following SB:

Document No.	Pages	Revi-sion	Date
R–R SB No. RB.211–72–9672	1–31	1	Nov. 6, 1992.
R–R SB Supplement	1–2	1	Nov. 6, 1992.
Total pages	33		

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce, plc, P.O. Box 31, Derby, England DE2 8BJ; telephone 44–332–242424, fax 44–332–249936. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 8, 1995.

Issued in Burlington, Massachusetts, on February 15, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–4545 Filed 3–6–95; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 94–NM–157–AD; Amendment 39–9158; AD 95–04–06]

Airworthiness Directives; British Aerospace Model Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model Avro 146–RJ series airplanes, that requires inspections to detect cracking of the upper main fitting of the nose landing gear (NLG), and replacement or repair of cracked parts. This amendment is prompted by reports of cracking of the upper main fitting of the NLG. The actions specified by this AD are intended to prevent failure of the main fitting, which could lead to collapse of the NLG during landing.

DATES: Effective on April 6, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 6, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Holdings, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041–6039. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model Avro 146–RJ series airplanes was published in the Federal Register on November 7, 1994 (59 FR 55380). That action proposed to require repetitive eddy current or ultra high sensitivity penetrant inspections, and replacement or repair of cracked parts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $450, or $150 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–04–06 British Aerospace Regional Aircraft Limited, Avro International Aerospace Division (Formerly British Aerospace, plc; British Aerospace Commercial Aircraft, Limited): Amendment 39–9158. Docket 94–NM–157–AD.

Applicability: All Model Avro 146–RJ series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a

request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the failure of the main fitting, which could lead to collapse of the nose land gear (NLG) during landing, accomplish the following:

(a) For airplanes on which NLG part number 200876001 or 200876003 has been installed:

(1) Prior to the accumulation of 4,000 total landings or within 30 days after the effective date of this AD, whichever occurs later, conduct an eddy current or ultra high sensitivity penetrant inspection of the NLG, in accordance with British Aerospace Service Bulletin S.B. 32–131, Revision 2, dated July 10, 1993. Repeat the inspection thereafter at intervals not to exceed 4,000 landings.

(2) If cracking is detected during any inspection required by this paragraph, prior to further flight, replace the currently installed NLG with a new or serviceable unit, or repair the crack, in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. After replacement or repair, repeat the inspection at intervals not to exceed 4,000 landings.

(b) For airplanes on which NLG part number 200876002, 200876004, or 201138002 has been installed:

(1) Prior to the accumulation of 16,000 total landings or within 30 days after the effective date of this AD, whichever occurs later, conduct an eddy current or ultra sensitivity penetrant inspection of the NLG, in accordance with British Aerospace Service Bulletin S.B. 32–131, Revision 2, dated July 10, 1993. Repeat the inspection thereafter at intervals not to exceed 8,000 landings.

(2) If cracking is detected during any inspection required by this paragraph, prior to further flight, replace the currently installed NLG with a new or serviceable unit, or repair the crack, in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. After replacement or repair, repeat the inspection at intervals not to exceed 8,000 landings.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections shall be done in accordance with British Aerospace Service Bulletin S.B. 32–131, Revision 2, dated July 10, 1993, which contains the following effective pages:

Page No.	Revision level shown on page–	Date shown on page
1	2	July 10, 1993.
2–4–	1	Nov. 12, 1992.
Appendix A–1 1–4.	Original– ..	Dec. 6, 1991.

The replacement and repair shall be done in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Holdings, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041–6039. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 6, 1995.

Issued in Renton, Washington, on February 15, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4254 Filed 3–6–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 92–ANE–11; Amendment 39–9151; AD 95–03–15]

Airworthiness Directives; Textron Lycoming ALF502R Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Textron Lycoming ALF502R series turbofan engines, that reduces the service life for the No. 2 stage turbine disk, reduces the service lives for No. 1 and No. 3 through No. 7 stage compressor rotor disks, and requires a scheduled removal of these disks from service. This amendment is prompted by reports of cracks in disks returned from the field and in disks tested by the manufacturer. The actions specified by this AD are intended to prevent disk failure resulting in a possible uncontained engine failure.

DATES: Effective on May 8, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 8, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal Engines, 550 Main Street, Stratford, CT 06497. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7148, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Textron Lycoming ALF502R series turbofan engines was published in the Federal Register on March 16, 1993 (58 FR 14185). That action proposed to reduce the service life for the No. 2 stage turbine disk, reduce the service lives for No. 1 and No. 3 through No. 7 stage compressor rotor disks, and require a scheduled removal of these disks from service in accordance with Textron Lycoming Service Bulletin (SB) ALF502R 72–281, dated February 7, 1992.

The compliance section of this final rule has been revised to specify the reduced service lives for each affected disk, to clarify that the reduced service lives are the new life limits.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously.

On October 28, 1994, AlliedSignal Inc. purchased the turbine engine product line of Textron Lycoming, but as of this date the anticipated name change on the type certificate for the ALF502R series engines has not occurred.

There are approximately 700 Textron Lycoming ALF502R series turbofan

engines of the affected design in the worldwide fleet. The FAA estimates that 200 engines installed on aircraft of U.S. registry will be affected by this AD. The required reduction in service life will cost $41,400 per engine based on the cost of a new disk prorated over the reduced service life as compared to the current service life. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,280,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–03–15 Textron Lycoming: Amendment 39–9151. Docket 92–ANE–11.

Applicability: Textron Lycoming ALF502R series turbofan engines installed on but not limited to British Aerospace BAe-146 aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent No. 2 stage turbine disk, and No. 1 and No. 3 through No. 7 stage compressor rotor disk, failure resulting in possible uncontained engine failure, accomplish the following:

(a) Remove from service No. 2 stage turbine disks, P/Ns 2–121–058–18, 2–121–058–20, and 2–121–058–R24, in accordance with the schedule defined in paragraph B(1) of Table 1 of Textron Lycoming Service Bulletin (SB) ALF502R 72–281, dated February 7, 1992, and replace with a disk with cycle accumulation no greater than the reduced service life limit of 10,000 cycles.

(b) Remove from service No. 1 stage compressor rotor disks, P/N 2–101–331–04, in accordance with paragraph A(1) of Table 1 of Textron Lycoming SB No. ALF502R 72–281, dated February 7, 1992, and replace with a disk with cycle accumulation no greater than the reduced service life limit of 12,500 cycles.

(c) Remove from service No. 3 stage compressor rotor disks, P/Ns 2–101–263–02, 2–101–263–05, 2–101–263–06, 2–101–263–09, and 2–101–263–R10, in accordance with paragraph A(2) of Table 1 of Textron Lycoming SB No. ALF502R 72–281, dated February 7, 1992, and replace with a disk with cycle accumulation no greater than the reduced service life limit of 11,800 cycles.

(d) Remove from service No. 4 stage compressor rotor disks, P/Ns 2–100–042–03, 2–100–042–07, 2–100–042–09, and 2–100–042–R08, in accordance with paragraph A(3) of Table 1 of Textron Lycoming SB No. ALF502R 72–281, dated February 7, 1992, and replace with a disk with cycle accumulation no greater than the reduced service life limit of 9,000 cycles.

(e) Remove from service No. 5 stage compressor rotor disks, P/Ns 2–100–043–01, 2–100–043–07, 2–100–043–09, and 2–100–043–R08, in accordance with paragraph A(4) of Table 1 of Textron Lycoming SB No. ALF502R 72–281, dated February 7, 1992, and replace with a disk with cycle accumulation no greater than the reduced service life limit of 12,300 cycles.

(f) Remove from service No. 6 stage compressor rotor disks, P/Ns 2–100–044–01, 2–100–044–05, 2–100–044–07, and 2–100–044–R06, in accordance with paragraph A(5) of Table 1 of Textron Lycoming SB No. ALF502R 72–281, dated February 7, 1992, and replace with a disk with cycle accumulation no greater than the reduced service life limit of 12,500 cycles.

(g) Remove from service No. 7 stage compressor rotor disks, P/Ns 2–100–045–01, 2–100–045–05, 2–100–045–07, and 2–100–045–R06, in accordance with paragraph A(6) of Table 1 of Textron Lycoming SB No. ALF502R 72–281, dated February 7, 1992, and replace with a disk with cycle accumulation no greater than the reduced service life limit of 9,200 cycles.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(i) The actions required by this AD shall be done in accordance with the following Textron Lycoming service bulletin:

Document No.	Pages	Date
ALF502R 72–281	1–5	Feb. 7, 1992.
Total pages ..	5	

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Textron Lycoming, 550 Main Street, Stratford, CT 06497. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(j) This amendment becomes effective on May 8, 1995.

Issued in Burlington, Massachusetts, on February 8, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–4125 Filed 3–6–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8581]

RIN 1545–AQ87

Certain Cash or Deferred Arrangements and Employee and Matching Contributions Under Employee Plans; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: The final regulations (TD 8581), which are the subject of these corrections were published in the Federal Register for Friday, December 23, 1994 (59 FR 66165). The final regulations govern certain cash or deferred arrangements and employee and matching contributions under employee plans.

EFFECTIVE DATE: December 23, 1994.

FOR FURTHER INFORMATION CONTACT: Catherine Livingston Fernandez at (202) 622–4606 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 401(a)(30), 401(k), 401(m), 402(a)(8), 402(g), 411(d)(6), 415(c), 416 and 4979 of the Internal Revenue Code.

Need for Correction

As published, TD 8581 contains typographical errors that are in need of correction.

Correction of Publication

Accordingly, the publication of the final regulations which is the subject of FR Doc. 94–31427, is corrected as follows:

1. On page 66165, column 2, in the preamble following the paragraph heading ''*1. Coordination With Regulations Under Sections 401(a)(4), 401(a)(17), 410(b), and 414(s)*'', paragraph 2, line 10, the section ''410(k)'' is corrected to read ''401(k)''.

§ 1.401(k)–1 [Corrected]

2. On page 66173, column 2, § 1.401(k)–1, paragraph (f)(3)(iii)(C), line 11, the regulations section ''§ 410(b)–7(c)'' is corrected to read ''§ 1.410(b)–7(c)''.

§ 1.401(m)–1 [Corrected]

3. On page 66178, column 1, § 1.401(m)–1, paragraph (e)(6), *Example 3*., third line from the bottom of the paragraph, the language ''in compensation). Since Plan X satisfies the'' is corrected to read ''in compensation. Since Plan X satisfies the''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–5552 Filed 3–6–95; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

North Carolina State Plan; Suspension of Limited Concurrent Federal Enforcement

AGENCY: Department of Labor, Occupational Safety and Health Administration (OSHA).

ACTION: Final rule; notice of suspension of concurrent Federal enforcement.

SUMMARY: This document announces OSHA's suspension of its exercise of concurrent Federal enforcement authority in North Carolina. Federal enforcement authority will be exercised only with regard to those issues not covered by the State plan and in specific areas defined in this document under ''Level of Federal Enforcement.''

EFFECTIVE DATE: March 7, 1995.

FOR FURTHER INFORMATION CONTACT: Richard Liblong, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N3647, 200 Constitution Avenue NW., Washington, DC 20210, (202) 219–8148.

SUPPLEMENTARY INFORMATION:

A. Background

Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 667, provides that States which wish to assume responsibility for developing and enforcing their own occupational safety and health standards, may do so by submitting, and obtaining Federal approval of, a State plan. State plan approval occurs in stages which include initial approval under section 18(b) of the Act and, ultimately, final approval under section 18(e). In the interim, between initial approval and final approval, there is a period of concurrent Federal/State jurisdiction within a State operating an approved plan. See 29 CFR 1954.3 for guidelines and procedures.

The North Carolina Occupational Safety and Health Plan was approved under section 18(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(c)) (hereinafter referred to as the Act) and part 1902 of this chapter on January 26, 1973 (38 FR 3041), and certified by OSHA as having completed all of its developmental steps on October 5, 1976 (41 FR 43896). On February 20, 1975, OSHA and the State of North Carolina entered into an Operational Status Agreement which suspended the exercise of Federal concurrent enforcement authority in all except specifically identified areas. (See 40 FR 16843).

On September 3, 1991, a tragic fire occurred at the Imperial Food Products chicken processing plant in Hamlet, North Carolina, which resulted in the deaths of 25 workers. In response to that event OSHA understood a comprehensive reevaluation of the performance of the North Carolina State Plan and a special evaluation of all other State Plans. On October 24, 1991 (56 FR 55192) OSHA reasserted concurrent Federal enforcement jurisdiction in North Carolina with respect to all currently pending and new complaints of discrimination filed either with OSHA or the State; all complaints of unsafe or unhealthful working conditions brought to OSHA's attention on or after October 24, 1991 by employees or referred by others; and referrals from the North Carolina Governor's 800 ''Safety Line''. This action was responsive to the State's request for assistance. Upon further request, on March 31, 1992, (57 FR 10820) OSHA extended its jurisdiction to include all as yet uninvestigated workplace complaints filed with the State as of March 20, 1992.

Congressional oversight hearings were held on the Hamlet fire and the AFL–CIO, on September 11, 1991, petitioned the Assistant Secretary to withdraw approval of the North Carolina State Plan. (See September 30, 1991, 56 FR 49444, Request for Public Comment and January 16, 1992, 57 FR 1889, extension of the comment period and announcement of the availability of a Special Evaluation report on North Carolina.) On January 7, 1992, OSHA issued a Special Evaluation report on North Carolina finding significant deficiencies and giving the State 90 days to take corrective action. On April 23, 1992, OSHA determined that the State's response to the Special Evaluation findings was insufficient and gave North Carolina 45 days to show cause why plan withdrawal action should not be initiated. Fully satisfactory assurances the necessary corrective action would be undertaken were received in June 1992.

Since that date, North Carolina has made substantive and significant modifications to its program. Major modifications were made to the State's occupational safety and health program enabling legislation; State funding and staffing were increased. The State now has the inspection resources necessary to provide effective worker protection in the State and has addressed all of the deficiencies identified as a result of OSHA's 1991 Special Evaluation Report. The State increased its allocated enforcement staff to 115 (64 safety and 51 health) and trained its new compliance officers in accord with the schedule outlined in the State's June 1992 corrective action commitments. (On-board compliance staffing totals 104—61 safety and 43 health as of February 1, 1995.) North Carolina resumed responsibility for all discrimination complaints effective July 1, 1992, as a result of enactment of legislation creating the Workplace Retaliatory Discrimination (WORD) Division, selection and training of dedicated staff, and revision of its discrimination manual to be comparable

to OSHA's. The State has no appreciable backlog of workplace complaints and is conducting programmed inspection. These and others actions have also resolved all issues raised in the AFL–CIO's petition for withdrawal of approval of the North Carolina State Plan.

OSHA has issued three evaluation reports on North Carolina's performance since the Special Evaluation. All have documented continuing improvement and indicate that the program is now operating in a more than acceptable manner with an outstanding commitment to necessary enforcement as well as creative outreach and other voluntary compliance activities.

As a result of these actions, OSHA was prepared to suspend its exercise of concurrent Federal jurisdiction in North Carolina by mid-1994. However, two initiatives that the State had undertaken were brought to OSHA's attention as potential problems—the conditions attendant to the establishment of a joint Ergonomics Center with North Carolina State University; and an amendment to State law establishing a two-step contest procedure as a means of expediting review of contested cases and achieving more timely abatement of hazards. Both of these issues have now been resolved. The ergonomics program has been revised to eliminate any possibility or perception that inspection or citation exemption could result from employer participation in the Ergonomics Center program. The informal conference procedures have been revised through an internal operating procedure and a proposed regulation to specify that any informal conference resulting from the contest process must be held within 20 days.

B. Decision

Based on the foregoing, OSHA has determined that the exercise of concurrent Federal enforcement jurisdiction is no longer warranted, and it is hereby suspended. Federal enforcement authority will be exercised only with regard to those issues not covered by the State and in specific areas defined in the following modification to 29 CFR 1952.155 ''Level of Federal Enforcement.''

OSHA has similarly determined that no further action is necessary or appropriate with regard to the AFL–CIO petition for North Carolina plan withdrawal. This does not preclude the resubmission of a petition at any time on substantive issues of State Plan structure or performance.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

Accordingly, 29 CFR 1952.155 is amended as set forth below.

Signed in Washington, DC, this 28th day of February 1995.

Joseph A. Dear,

Assistant Secretary.

PART 1952—[AMENDED]

1. The authority citation for 29 CFR part 1952 continues to read as follows:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902, Secretary of Labor's Order No. 1–90 (55 FR 9033).

2. Section 1952.155 of part 1952, subpart I—North Carolina is revised to read as follows:

Subpart I—North Carolina

§ 1952.155 Level of Federal enforcement.

Pursuant to § 1902.20(b)(1)(iii), discretionary Federal enforcement authority under Section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR part 1910, 29 CFR part 1926, and 29 CFR part 1928. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to: complaints filed with the U.S. Department of Labor alleging discrimination under Section 11(c) of the Act (29 U.S.C. 660(c)); enforcement with respect to private sector maritime activities, including enforcement of all provisions of the Act, rules or orders and all Federal standards, current or future, applicable to private sector maritime employment including 29 CFR part 1915, shipyard employment (including boat building establishments in SIC 3732 located on the navigable waters and all establishments in SIC 3731); 29 CFR part 1917, marine terminals; 29 CFR part 1918, longshoring (including all private sector and Federal sector marine cargo handling establishments or operations in SIC 4491 located within the State of North Carolina), 29 CFR part 1919, gear certification; all marinas in SIC 4493 located on the navigable waters; enforcement of marine construction activities on the navigable waters which are not directly accessible by land; and, enforcement of general industry and construction standards (29 CFR parts 1910 and 1926) appropriate to hazards found in these employments, which issues have been specifically excluded from coverage in the North Carolina plan; the enforcement of occupational safety and health standards on Indian reservations; enforcement relating to any contractors or subcontractors on any Federal establishment where the land has been ceded to the Federal Government; enforcement on military bases; enforcement of new Federal standards until the State adopts a comparable standard; situations where the State is refused entry and is unable to obtain a warrant or enforce the right of entry; enforcement of unique and complex standards as determined by the Assistant Secretary; enforcement in situations where the State is temporarily unable to exercise its enforcement authority fully or effectively; completion of enforcement actions initiated prior to the effective date of this notice; and investigations for the purpose of the evaluation of the North Carolina plan under sections 18 (e) and (f) of the Act (29 U.S.C. 667 (e) and (f)). The Regional Administrator for Occupational Safety and Health will make a prompt recommendation for the resumption of the exercise of Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in North Carolina.

[FR Doc. 95–5504 Filed 3–6–95; 8:45 am]

BILLING CODE 4510–26–M

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29 CFR Part 1952

Approved State Plans for Enforcement of State Standards; Approval of Supplements to the Hawaii State Plan

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Approval of supplements to the Hawaii State Plan.

SUMMARY: This document gives notice of Federal approval of supplements to the Hawaii State occupational safety and health plan. These supplements are: regulations concerning the Division of Occupational Safety and Health's Access to Employee Medical Records; changes to previously approved regulations covering the Labor and Industrial Relations Appeals, Board, General Provisions and Definitions, Recording and Reporting Occupational Injuries and Illnesses, Inspections, Citations, and Proposed Penalties, and Variances; an amendment to the Hawaii Occupational Safety and Health Law enacted in 1987; the Hawaii Consultation Policies and Procedures Manual; and the Hawaii Occupational

Safety and Health Administration Technical Manual.

EFFECTIVE DATE: March 7, 1995.

FOR FURTHER INFORMATION CONTACT: Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 523–8148.

SUPPLEMENTARY INFORMATION:

Background

The Hawaii Occupational Safety and Health Plan was approved under section 18(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(c)) (hereinafter referred to as the Act) and Part 1902 of this chapter on January 4, 1974 (39 FR 1010). Part 1953 of this chapter provides procedures for the review and approval of State change supplements by the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary).

Description of Supplements

A. Regulations

On September 16, 1982, the State submitted its regulation concerning the Division of Occupational Safety and Health's Access to Employee Medical Records. This regulation is identical to the Federal regulation set out in part 1913 of this Chapter. On March 11, 1988, the State submitted minor editorial revisions to this regulations.

On October 7, 1983, the State submitted a revised version of the Rules of Practice and Procedure of the Hawaii Labor and Industrial Relations Appeals Board. These rules have been reviewed and found to be as effective as the regulations governing the Federal Occupational Safety and Health Review Commission.

On June 27, 1983, the State submitted a revision to its regulation on Recording and Reporting Occupational Injuries and Illnesses (Chapter 52) to incorporate a change in the Federal regulation at Part 1904 of this Chapter concerning an exemption from requirements for recording occupational injuries and illnesses for certain low hazard industries. The State change is identical to the Federal revision. On March 11, 1988, the State submitted minor editorial changes to this regulation.

On June 27, 1983, the State submitted revisions to its regulations on Inspections, Citations, and Proposed Penalties (Chapter 51), to incorporate a change in the Federal regulation at Part 1903 of this Chapter concerning the use of personal sampling devices during inspections. On March 11, 1988, the State submitted further revisions to this regulation. OSHA's review of an earlier version of this regulation had expressed concern about the provisions for Petition for Modification of Abatement dates (PMAs). (See 43 FR 5820, February 10, 1978.) In response, the State revised its regulation to provide for employee contest of a PMA within ten days of posting of the petition and an opportunity for contest PMAs to be heard by the Appeals Board, with the burden of proof placed on the employer. In addition, the State has issued a Guideline which provides that the employer will be informed of the right to contest the denial of a PMA and that the Director will not grant an uncontested PMA before the ten day contest period has expired. These revisions make the Hawaii regulations at least as effective as the Federal regulations in Part 1903 of this Chapter. This submission also contained a change in the State's provision for filing complaints of discrimination for exercising rights under the Act. The change incorporates a revision to the Federal regulation at Part 1977 of this Chapter concerning time limits for filing such complaints.

On March 11, 1988, Hawaii submitted revisions to its Rules of Practice for Variances (Chapter 53). The State amended its regulations to allow for acceptance of Federally granted variances from standards which are identical to Federal standards.

The March 11, 1988 submission also included minor editorial changes to Hawaii's General Provisions and Definitions (Chapter 50). In addition, on March 13, 1992, the State submitted a revision to this regulation to include a definition of nationally recognized testing laboratories, in response to changes in the Federal definition. On July 13, 1993, the State submitted an updated Guideline on Nationally Recognized Testing Laboratories, which states that Hawaii will not establish its own testing program but will recognize Federally approved laboratories.

B. Amendment to Hawaii Occupational Safety and Health Law

In 1987, the State enacted an amendment to its Occupational Safety and Health Law. The amendment, submitted as a plan supplement on March 13, 1992, expands the type of information that is protected from disclosure in any discovery or civil action arising out of enforcement or administration of the law.

C. Consultation Manual

On June 12, 1987, the State submitted its Consultation Policies and Procedures Manual. This manual is identical to Part I of the Federal Consultation Policies and Procedures Manual.

D. Industrial Hygiene Technical Manual

On August 8, 1991, the State submitted notice of its adoption of the Federal OSHA Technical Manual, through Change 1. The State manual is identical to the Federal Technical Manual.

E. Revised Plan

On January 28, 1992, Hawaii submitted a reorganized State plan, incorporating the plan supplements approved herein as well as previously approved plan changes and other supplements still under review.

Location of Supplements for Inspection and Copying

A copy of the plan and the supplements may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 415, 71 Stevenson Street, San Francisco, California 94105; Director, Hawaii Department of Labor and Industrial Relations, 830 Punchbowl Street, Honolulu, Hawaii 96813; and the Office of the Director of Federal-State Operations, Room N3700, 200 Constitution Avenue NW., Washington, DC 20210.

Public Participation

Under § 1953.2(c) of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that the Hawaii plan supplements are consistent with Federal requirements and with commitments contained in the plan and previously made available for public comment. Good cause is therefore found for approval of these supplements, and further public participation would be unnecessary.

Decision

After careful consideration and extensive review by the Regional and National Offices, the Hawaii plan supplements described above are found to be in substantial conformance with comparable Federal provisions and are hereby approved under Part 1953 of this chapter. The decision incorporates the requirements and implementing regulations applicable to State plans generally.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

Signed at Washington, DC, this 20th day of February, 1995.

Joseph A. Dear,

Assistant Secretary.

Accordingly, 29 CFR Part 1952 is hereby amended as follows:

PART 1952—[AMENDED]

1. The authority citation for part 1952 continues to read:

Authority: Secs. 8, 18 Pub. L. 91–596, 84 Stat. 1608 Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

2. New paragraphs (b) through (f) are added to § 1952.316 of Subpart Y to read as follows:

§ 1952.316 Changes to approved plans.

* * * * *

(b) Regulations.

(1) The State's regulation on the Division of Occupational Safety and Health's Access to Employee Medical Records, and amendments to State regulations covering the Labor and Industrial Relations Appeals Board; General Provisions and Definitions; Recording and Reporting Occupational Injuries and Illnesses; Inspections, Citations, and Proposed Penalties; and Variances, promulgated by the State through March 22, 1991, were approved by the Assistant Secretary on February 20, 1995.

(2) [Reserved]

(c) Legislation.

(1) An amendment to the Hawaii Occupational Safety and Health Law, enacted in 1987, which expands the type of information that is protected from disclosure in any discovery or civil action arising out of enforcement or administration of the law, was approved by the Assistant Secretary on February 20, 1995.

(2) [Reserved]

(d) Consultation Manual. The State's Consultation Policies and Procedures Manual was approved by the Assistant Secretary on February 20, 1995.

(e) Occupational Safety and Health Administration Technical Manual. The State's adoption of the Federal OSHA Technical Manual, through Change 1, was approved by the Assistant Secretary on February 20, 1995.

(f) Reorganized Plan. The reorganization of the Hawaii plan was approved by the Assistant Secretary on February 20, 1995.

[FR Doc. 95–5505 Filed 3–6–95; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA23

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Mental Health Services

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule is to reform CHAMPUS quality of care standards and reimbursement methods for inpatient mental health services. The rule updates existing standards for residential treatment centers (RTCs) and establishes new standards for approval as CHAMPUS-authorized providers for substance use disorder rehabilitation facilities (SUDRFs) and partial hospitalization programs (PHPs); implements recommendations of the Comptroller General of the United States that DoD establish cost-based reimbursement methods for psychiatric hospitals and residential treatment facilities; adopts another Comptroller General recommendation that DoD remove the current incentive for the use of inpatient mental health care; and eliminates payments to residential treatment centers for days in which the patient is on a leave of absence.

DATES: This rule is effective April 6, 1995, except amendments to § 199.4 which are effective October 1, 1995.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development; Aurora, Colorado 80045–6900.

FOR FURTHER INFORMATION CONTACT: CAPT Deborah Kamin, NC, USN, Office of the Assistant Secretary of Defense (Health Affairs), (703) 697–8975.

Questions regarding payment of specific claims should be addressed to the appropriate CHAMPUS contractor.

SUPPLEMENTARY INFORMATION: Provisions of this rule apply to the CHAMPVA (Civilian Health and Medical Program of the Department of Veterans Affairs) in the same manner as they apply to CHAMPUS.

I. Introduction

Quality assurance and cost effectiveness of mental health care services under CHAMPUS continue to be major reform issues for the Defense Department and Congress. In recent years, a series of DoD initiatives, legislative and regulatory actions, and Congressional hearings have spotlighted both progress made and the need for more improvement.

Two recent Comptroller General Reports are indicative of the importance of these issues and the need for reform. The first of these, ''Defense Health Care: Additional Improvements Needed in CHAMPUS's Mental Health Program,'' GAO/HRD–93–34, May 1993, stated that, although DoD has taken actions to improve the program ''several problems persist.'' The Report (hereafter referred to as ''GAO Report #1'') elaborated:

> For example, reviews of medical records have identified numerous instances of poor medical record documentation, potentially inappropriate admissions, excessive hospital stays, and poor-quality care. Also, inspections of RTCs [Residential Treatment Centers] continue to reveal significant health and safety problems, and corrective actions often take many months.
>
> Moreover, DoD * * * pays considerably higher rates for comparable services than do other public programs.

GAO Report #1, p. 2. The Report referenced the General Accounting Office's 1991 Congressional testimony regarding CHAMPUS mental health care and inspections of residential treatment facilities conducted for DoD since then:

> Inspections conducted since our 1991 testimony have identified some of the same problems we described then: unlicensed and unqualified staff, inappropriate use of seclusion and medication, inadequate staff-to-patient ratios, and inadequate documentation of treatment.

The principal conclusions of this Report were: (1) ''Standards, which include termination for noncompliance, should be specified and termination proceedings, time frames, and reinspection provisions * * * should be adopted;'' and (2) because ''DoD reimburses psychiatric hospitals and RTCs at higher rates than do other government payers, it should modify its payment system to more closely resemble other programs such as Medicare.'' GAO Report #1, p. 9.

A second recent Comptroller General Report, ''Psychiatric Fraud and Abuse: Increased Scrutiny of Hospital Stays Is Needed to Lessen Federal Health Program Vulnerability,'' GAO/HRD–93–92, September 1993, also called for improvements in the CHAMPUS mental health program. The Report (hereafter referred to as GAO Report #2) said:

> Investigations to date have revealed that federal health programs have been subject to fraudulent and abusive psychiatric hospital

practices, but apparently to a lesser extent than private insurers * * *

Some federal control weaknesses do exist which have resulted in unnecessary hospital admissions, excessive stays, and sometimes inadequate quality of care * * *

DOD has also identified numerous instances of quality problems and unnecessary hospital admissions.

GAO Report #2, pp. 9–10.

These two recent Comptroller General Reports, as well as a substantial body of other documentation, highlight the need for a very active quality assurance program. As discussed further below, two primary issues are presented. First, there is a need for clear, specific standards for psychiatric facilities on staff qualifications, clinical practices, and all other aspects directly impacting the quality of care. These standards are needed for residential treatment facilities, substance use disorder rehabilitation facilities, and partial hospitalization programs. These standards will help bring those facilities, a minority in the industry, that have been unwilling or unable to comply with necessary requirements, up to an appropriate standard of care.

The second key issue is reimbursement rates. As documented by the Comptroller General, CHAMPUS needs to discontinue payment rates based on historical billed charges and establish payment rates based on the actual costs of providing the services.

This final rule puts into place as part of the CHAMPUS regulation comprehensive quality of care certification standards for residential treatment facilities, substance abuse rehabilitation facilities, and partial hospitalization programs. It also modifies current payment methodologies, which will result in rates approximating the costs of providing services in psychiatric hospitals and moving toward cost levels for residential treatment facilities. In addition, the rule addresses several other issues, addressed below.

II. Provisions of Rule to Reform Certification Standards for Mental Health Care Facilities

The Comptroller General's call for stronger management by CHAMPUS to assure quality of care in the mental health programs was based partially on a review of serious abuses on the part of some providers. The GAO presented audit findings identifying program weaknesses. Texas, which is one of four states which account for more than half of CHAMPUS mental health hospital costs, surfaced in recent audits as number one in CHAMPUS mental health expenditures. Of particular concern are practices described during 1991 hearings conducted before the Texas state senate and summarized in GAO Report #2. In over 80 hours of testimony, 175 witnesses—some beneficiaries of federal programs—brought forth allegations which included exorbitant charges for care never rendered; kickbacks for patient referrals; restraint of voluntary patients against their will; discharge of patients upon exhaustion of benefits, regardless of their condition; and isolation of family from patients, including withholding of visitation and mail/telephone privileges. While privately insured patients are the most common target of unethical practices, increasing benefit limits and payment controls by private third party payers may place federal programs at increased risk for fraudulent practices. GAO auditors point out that, because CHAMPUS reimburses mental health at rates higher than other federal programs, it may be particularly vulnerable to the minority of unethical providers seeking additional revenue sources.

In recent years, the Department has worked to strengthen oversight and monitoring of mental health programs, particularly with respect to treatment of children and adolescents. Through the contract with HMS, and other efforts, CHAMPUS has paid much more attention to care in RTCs. In [insert 30 days after date of publication] of 1992, Health Management Strategies International (HMS) expressed specific concerns about several of the CHAMPUS-authorized residential treatment centers. Numerous quality of care issues surfaced during on-site facility visits to residential treatment centers where CHAMPUS beneficiaries were receiving care.

Here are several examples:

—Staff qualifications were deficient. In some cases, patient treatment was not being directed by qualified psychiatrists. At one facility, psychiatry residents were acting as facility medical directors. In some facilities, one psychiatrist may be responsible for as many as 90 children and their families, seriously limiting professional time available for individual attention. In some RTCs, group therapy was being conducted by child care workers with high school diplomas.

—Several facilities failed to individualize treatment plans. At one facility all treatment plans were the same, regardless of history, needs or problems. Similarly, some facilities were discovered to focus on one type of treatment to the exclusion of all other approaches. This was true regardless of whether or not patients responded to this type of treatment.

—In several facilities, registered nurses were not available on a full-time basis. For example, at one facility children were ordering their own medications ''as needed'' and medications were dispensed—without further evaluation—by untrained child care workers. In one instance a child who developed tardive dyskinesia (a motion disorder resulting from medication) was described by a child care worker as having a ''nervous tic.''

—There was evidence of excessive use of restraints and seclusion as methods of behavioral management. Examples including placing children as young as three or four in restraint and seclusion. In one facility, seclusion was used 146 times in one month. The practice of zipping children into so-called ''body bags'' was employed by several facilities. Use of a body bag, which leaves an opening only for the head, carries risk of overheating to the point of lethal hyperthermia. One facility policy governing this practice did not require physician evaluation of the patient for 72 to 96 hours after the event.

—Certain RTCs employed unnecessary strip searches and other intrusive acts. Searches involve adult authority figures for forcing children between the ages of four and 18 to remove all clothing and submit to cavity searches. Cavity searches involve finger probes to the mouth, vagina, and rectum. Some facilities were requiring such searches whenever the patient returned from a pass or having a visitor. In many cases, children subjected to such searches were victims of abuse and, for some, these methods of search re-enact the original trauma.

These HMS case findings pointed out shortcomings in practices in some RTCs that can be addressed through improved standards. Although standards for residential treatment centers exist, they have evolved over time from attempts to address individual issues with incremental change. Further, existing CHAMPUS standards for residential treatment centers were written as supplements to standards employed by the Joint Commission on Accreditation of Hospital Organizations (JCAHO). In recent years, the JCAHO has moved toward a more general set of facility standards, with less specific reference to unique requirements of medical specialties. The result has been that CHAMPUS standards—which were not

intended to stand alone—do not address the full spectrum of requirements and expectations for mental health facilities and providers.

Originally drafted in the late 1970s, CHAMPUS standards for RTCs have undergone multiple revisions to ensure they reflect currently accepted clinical practice. This rule incorporates revisions necessary to update existing standards. With shorter lengths of stay in acute care facilities, mental health patients are reaching residential treatment centers at earlier—and less stable—stages of treatment. Similar to trends in other medical specialties, the growing intensity of illness among inpatients has dictated a need for higher standards of care and increasing levels of professional supervision and treatment. Current CHAMPUS standards for RTCs must be updated to reflect more clearly professional skill levels and intervention strategies employed in today's mental health environment. Based on a clear record of problems among some institutional mental health providers and the shortcomings of current standards, DoD has developed a comprehensive, unified set of standards for residential treatment centers, partial hospitalization programs and substance use disorder rehabilitation facilities. This rule updates existing standards to reflect current mental health practices, account for policy shifts in the JCAHO, and communicate clearly CHAMPUS policy with regard to quality and scope of care provided to its beneficiaries.

The standards will work to prevent recurrence of abuses such as those discussed by defining more completely and specifically quality indicators which will be used to judge care rendered in these facilities. Among areas addressed by the standards are:

Qualifications and authority of clinical director. Standards require the clinical director of any RTC to have completed appropriate training and have at least five years' experience in treating children and adolescents. In addition to oversight of all clinical care provided, standards for RTCs, substance abuse rehabilitation facilities and partial hospitalization programs outline specific requirements for clinical director participation in program development, peer review, quality monitoring and improvement and coordination with the governing body.

Adequate staffing with qualified professionals. Standards require written staffing plans. Specific information is provided concerning requirements for staffing levels and professional qualifications 24 hours per day, seven days per week (or, in the case of partial hospitalization programs, during all hours of operation). Standards require that all clinical care provided under clinical supervision is the responsibility of a licensed or certified mental health professional. Additionally, there must be evidence to show that ultimate authority for management of the medical aspects of care is vested in a physician.

Patient rights and limitations on use of seclusion and restraint. Standards require provisions for protection of all individual patient rights, including civil rights, provided for under federal law and the laws of the state where the residential treatment center is located. Specific requirements address privacy, personal freedoms, contact with families and environmental safety. Detailed guidelines for use, supervision and medical monitoring of behavior management—including use of seclusion and retraint—are also provided.

Implementation of individualized treatment plans addressing each patient's needs. Responsibility of development, supervision, implementation and assessment of written, individualized and interdisciplinary treatment plans is assigned to a qualified mental health professional. Treatment goals must be communicated to the family, must undergo regular review and must include specific, measurable and observable criteria for discharge.

Comprehensive evaluation system to guide an ongoing quality improvement program. Standards provide detailed expectations with respect to evaluation systems by which quality, efficiency, appropriateness and effectiveness of care, treatments, and services are provided. The evaluation system must involve all disciplines, services, and programs of the facility, including administrative and support activities. Responsibility for development and implementation of quality assurance and quality improvement programs rests with the clinical director and must support overall facility and philosophical assumptions and values.

The standards are designed to foster interdisciplinary communication and patient protection through involvement and oversight of the Governing Body, Chief Executive Officer, Clinical Director, and Professional Staff with respect to administrative, utilization review, and clinical activities. DoD has also strengthened standards for substance abuse treatment programs in a manner similar to residential treatment centers. For partial hospitalization, these standards occur as part of implementation of this new benefit, which became effective September 29, 1993.

This rule incorporates basic requirements governing CHAMPUS approval of facilities providing mental health services as residential treatment centers, as partial hospitalization providers, and substance use disorder rehabilitation facilities. More detailed definition of these basic standards have been issued under the authority of this regulation. It should be noted that only the requirements included in this final regulation have, by themselves, the force and effect of law. Additional detail in the more lengthy standards are extensions of the regulation. They establish the agency's interpretations of the regulation and will serve as guidelines for compliance with the regulatory requirements. The complete standards are available to the public from the Office of CHAMPUS. These more lengthy standards are finalized coincident with issuance of this final regulation.

III. Provisions of Rule to Reform Payment Methods for Mental Health Care Facilities

This rule implements payment reforms in keeping with the Comptroller General's recommendations regarding payment reform for mental health care facilities. The Comptroller General's findings regarding current CHAMPUS payment rates are especially noteworthy. According to the report: ''Our work indicates that DoD pays psychiatric facilities considerably more than other government programs do for comparable services.'' GAO Report #1, p.6. The Comptroller General very accurately summarized the background of the current CHAMPUS payment methods for psychiatric hospitals and RTCs:

> Although the current CHAMPUS system of per diem reimbursements has helped limit program cost increases for inpatient mental health, the per diem rates were based on providers' billed charges, not their costs. The rates were based on billing data from a period when providers' charges were not subject to controls and had just increased significantly. Before 1989 when no upper limit on rates existed, hospitals, and RTCs essentially set their own CHAMPUS payment rates. Before the per diem calculations, hospitals and RTC rates increased significantly. For example, average daily charges per CHAMPUS inpatient day rose by 17 percent from fiscal years 1987 to 1988. One RTC boosted its daily charges from an average of $331 in fiscal year 1987 to $531 in June 1988—a 60% increase.

GAO Report #1, pp 6–7.

Because CHAMPUS payments are based on historical billed charges, they substantially exceed the facilities' actual

costs and Medicare reimbursement rates. Based on an analysis of payments to a number of high CHAMPUS volume psychiatric hospitals, the Comptroller General concluded ''The hospitals made large profits, on average, on CHAMPUS patients.'' GAO Report #1, p. 7.

A similar pattern emerges on payment rates for RTCs. Using fiscal year 1991 data, the Comptroller General compared CHAMPUS payments to state-authorized daily rates for a number of RTCs in Florida and Virginia, and found that the average daily CHAMPUS rate was 36 percent more than the average state rate. RTC cost data were available for three RTCs in Texas, the state with the highest total CHAMPUS RTC costs. These data showed ''an average profit margin of 27 percent.'' *Id*., p. 8. The Comptroller General also stated that the index factor used to annually update CHAMPUS RTC per diems, the consumer price index for urban medical services (CPI–U), results in excessive increases. The GAO Report says the hospital market basket index factor that CHAMPUS and Medicare use for hospital payments ''would be more appropriate than the CPI–U because it reflects increases in the amounts hospitals pay for goods and services'' rather than ''increases in charges by health practitioners and facilities.'' *Id*.

The problem of excessive payments also involves substance use disorder rehabilitation facilities, which continue to be paid by CHAMPUS billed charges. According to the Comptroller General:

> These facilities set their own fees and can increase them freely—without controls over their charges. Some of the facilities are paid more on a daily basis than are psychiatric hospitals. *Id*.

Based on these findings, the Comptroller General recommended that the Secretary of Defense:

> Establish a system of reimbursing psychiatric facilities, RTCs, and specialized treatment facilities based on a cost-based system similar to Medicare, adjusted appropriately for differences in beneficiary demographics, rather than the present per diem or billed charges system.

Id., p. 10.

Under the proposed rule, CHAMPUS payments to specialty psychiatric hospitals and units and residential treatment facilities would have gradually transitioned from the present system of per diem rates based on historical billed charges to a new system of per diem rates based on detailed facility cost reports. Comments from providers and the professional community pointed out the significant administrative complexity and costs associated with payments based on cost reporting. They proposed alternatives premised on adjustments to the current system. We have been persuaded by these comments and have made adjustments to current payment structures which, although not based on detailed facility cost reports, move CHAMPUS reimbursement rates significantly closer to the costs of delivering care in mental health facilities. This rule is based on the legal authority of 10 USC 1079(j)(2) which authorizes CHAMPUS to adopt payment methods for institutional providers similar to those applicable to Medicare. Under the final rule, CHAMPUS payments to specialty psychiatric hospitals and units will remain at FY95 rates for a two-year period beginning in FY96. Additionally, effective [insert 30 days after date of publication], the cap on per diem rates for these hospitals and units will be reduced from the current 80th percentile to the 70th percentile of all CHAMPUS base year charges in high volume hospitals. In FY98, payments will again be updated using the Medicare update factor for hospitals and units exempt from the Medicare Prospective Payment System.

With respect to RTCs, the rule makes similar adjustments to current payment methodologies. Per diem rates will remain at FY95 rates during fiscal years 1996 and 1997 and will be subject to a cap set at the 70th percentile of all CHAMPUS RTC per diem rates. RTCs with FY95 payment rates below the 30th percentile of all RTC CHAMPUS per diem rates will be exempt from the two year freeze in rates, instead continuing the current methodology for annual updates, up to the 30th percentile rate. Beginning in FY 1998, payment updates for all RTCs will be based on the Medicare update factor used for hospitals and units exempt from Medicare's Prospective Payment System.

We estimate that payment methodologies under this rule will lead to aggregate expenditures which approximate average costs in psychiatric hospitals and units. While cost data are not generally available for RTCs, we estimate that under this rule, aggregate expenditures for RTC care will move closer to the level of average facility costs. We expect that over the next two years, we will obtain more data on actual RTC costs that will facilitate an assessment of whether additional regulatory changes should be considered.

With respect to substance use disorder rehabilitation facilities, this rule includes services provided by these facilities under the CHAMPUS DRG-based payment system. Currently, most substance use disorder rehabilitation services reimbursed by CHAMPUS are provided by facilities covered by the CHAMPUS DRG system or mental health per diem system. Only a small portion are provided by facilities that continue to be paid on the basis of billed charges. Under Medicare, these facilities are covered by the Medicare Prospective Payment System. Based on these factors, we believe inclusion of services provided by substance use disorder rehabilitation facilities should be included with the similar services already covered by the CHAMPUS DRG-based payment system. Partial hospitalization for substance use disorder rehabilitation will be reimbursed in the same manner as psychiatric partial hospitalization programs and the rates will be frozen at the FY95 level for fiscal years 1996 and 1997.

The payment system changes appear at the proposed revisions to section 199.14.

IV. Other Provisions of Rule

A. Therapeutic Leave of Absence Days

Currently, DoD pays RTCs for days a patient is away from the facility on an approved therapeutic leave of absence. The payment amount is 100% of the normal per diem for the first three days and 75% for additional days. It is our view that current rates are not justified by any costs to the facility. In addition, we are aware of no other public payer that pays for leave days. Therefore, for care provided on or after July 1, 1995, this rule eliminates payment for days in which patients are on leave from the residential treatment center. We received a number of comments objecting to this on the grounds that therapeutic leave of absence are an important part of therapy, and should be recognized in reimbursement for services. We agree that therapeutic leaves are an important component in the patient's overall treatment plan. However, because payment rates to RTCs under this rule will probably remain above average costs, we believe they will be sufficient to cover facility costs associated with reserving space for the patient's return. This change applies only to RTCs; in psychiatric hospitals, substance use disorder rehabilitation facilities and partial hospitalization programs, leave days are not reimbursed by CHAMPUS.

B. Reversing Incentive for Inpatient Care

Another of the recommendations of the Comptroller General was to ''reverse the financial incentives to use inpatient care by introducing larger copayments for CHAMPUS inpatient care.'' GAO

Report #1, p. 10. This recommendation was based on the Comptroller General's conclusion that there is a ''bias toward patients receiving inpatient rather than outpatient care'' because inpatient care is less expensive for dependents of active duty members than outpatient care. *Id*., p. 8–9. These beneficiaries currently pay approximately $10.00 per day or $25 per admission, whichever is greater, for inpatient care. For outpatient care, dependents of active duty members pay a $150 deductible (subject to a $300 family limit) and 20 percent of the allowable payment for individual professional services. Consequently, as a general matter, there is a financial incentive for beneficiaries to seek services on an inpatient, rather than an outpatient basis. Under 10 U.S.C. section 1079(i)(2), DoD has authority to establish mental health copayment requirements different from those for other CHAMPUS services.

This rule establishes a per day copayment of $20 for dependents of active duty beneficiaries. This is based on the fact that an outpatient mental health visit is generally approximately $100, meaning that the copayment would be $20. Thus, an inpatient day would have a roughly equal beneficiary copayment as an outpatient visit (excluding the deductible). One commenter objected to this proposal. Based on DoD experience in delivery of mental health services, information collected during utilization management reviews, and reports from the GAO, our observation is that inpatient mental health services remain vulnerable to over utilization. We believe this modest increase in inpatient cost share addresses the Comptroller General's recommendation, without impairing access to care or imposing hardship on beneficiaries. (With respect to avoidance of hardship, we note that the catastrophic cap for active duty dependents is $1000 per family per year.) To ensure adequate notice of providers and beneficiaries we have established an effective date of October 1, 1995 for the copayment requirements as stated above.

C. Equalization of Alcoholism and Drug Abuse Benefit Provisions

The frequent coexistence of alcohol and other chemical dependency or abuse suggests existing differences in benefit structures for treatment of alcohol and drug abuse should be eliminated. Effective for admissions on or after October 1, 1995, this rule includes treatment for both alcohol and drug dependency/abuse under a broad benefit package designed to include treatment of all substance use disorders.

IV. Additional Discussion of Public Comments

The proposed rule was published in the Federal Register June 29, 1994 (59 FR Page 33465). We received 23 comment letters, all of which were from providers and provider associations. Many of the comments were quite similar in wording and content. Some were very detailed and provided helpful insight and analysis. We thank those who provided input on this important issue. Significant items raised by commenters and our analysis of the comments are summarized below.

1. *GAO Recommendations are Based Upon Outdated Information.* We received a significant number of comments regarding our reliance on GAO reports for developing components of the proposed rule. Findings and recommendations provided in GAO reports relied to some extent on information gathered prior to realization of impact from several DoD quality, cost and utilization management initiatives.

Response. Although substantial progress has been made as a result of earlier DoD efforts, ongoing utilization reviews and facility inspections continue to reveal departures from minimum CHAMPUS health and safety standards. Additionally, in many areas CHAMPUS continues to reimburse mental health services at significantly higher rates than many other third party payers. While the GAO analysis does not reflect the specific impact of recent initiatives, we believe the themes which emerged from their two reports remain current.

2. *Specificity of Standards.* Several commenters asserted that standards in the proposed rule were stated too broadly, leaving excessive room for interpretation and significant doubt as to the exact CHAMPUS requirements. Examples included the absence of stated requirements for specific staff-to-patient ratios and specific numbers for professional staffing. A similar comment was that terms like ''essentially stabilized'' and ''reasonable and observable'' treatment goals should be better defined. Commenters pointed out that specific standards which provide explicit requirements for all aspects of facility certification should be published for public review and comment prior to their application in the certification process.

Response. A more detailed set of standards which provide the agency's interpretation of standards contained in the rule are available from OCHAMPUS. These were made available for public review concurrent with publication of the proposed rule. The more detailed set of standards does not include specific requirements with respect to professional staff mix and staff-to-patient ratios because these will vary depending upon the characteristics of each facility. Consistent with regulatory standards in the rule and further described in the supplemental set available from OCHAMPUS, facilities should develop staffing patterns which reflect the characteristics and special needs of the population served, the patient census, and acuity/intensity of services required. With respect to specific definitions of terms, the unique requirements brought by each patient to the treatment setting necessarily require individual assessments, and professional judgment as to required level of care for the presenting symptoms or dysfunction and progress being made in addressing the patient's specific needs. As such, we do not think it appropriate to establish a fixed list of criteria which must be applied to all patients.

3. *Requirement for Physician Medical Directors.* Physician professional associations agreed with a requirement for physician medical directors, but associations representing non-physician mental health professionals objected to this. Several commenters recommended that current non-physician medical directors who are serving successfully should be exempt from this requirement.

Response. We have reconsidered the provisions in the proposed rule regarding physician oversight of all clinical services and agree that some of the language may have had the effect of unduly restricting the scope of practice for some providers, particularly doctoral level psychologists. We are also aware that widely recognized accrediting bodies, as well as several states, permit independent practice and hospital admitting privileges for certain non-physician providers. We have made revisions to language contained in the proposed rule to assure our standards are consistent with those of the Joint Commission on Accreditation of Hospital Organizations (JCAHO) and in keeping with changing practice patterns in the mental health community. Because treatment of mental health patients often includes pharmacologic intervention and evaluation and treatment for related or co-existing medical problems, physician management for these components of therapy is still required. We require medical management of patients to be under the supervision of a physician medical director. However, we also agree that oversight of the spectrum of clinical services provided in a program

may be accomplished by doctoral level psychologists. We have added language which allows clinical directors to be physicians or, where permitted by law and by the facility, doctoral level psychologists who meet CHAMPUS requirements for individual professional providers.

4. *Admitting Privileges for Non-physician Providers.* A number of commenters objected to proposed language which limited admitting privileges to physicians. They argued that such limitations on certain non-physician mental health professionals, for example, master's level clinical social workers, were unnecessarily restrictive and counter to legislative and industry trends toward an expanded scope of practice for these providers.

Response. We are aware of these changes and agree that, where permitted by law and by the facility, individuals who meet the CHAMPUS definition of individual professional mental health provider should be allowed to refer patients for admission. We have included language in the final rule which reflects this position.

5. *Qualifications for CEOs.* We received a number of comments suggesting that upgraded CEO requirements should not apply to individuals who, although they do not meet these standards, are currently serving in that capacity successfully.

Response. We believe the proposed standards for CEOs are appropriate, given the level and scope of responsibility attached to this position. However, we have included language which makes CEO qualification standards effective October 1, 1997. This should provide sufficient time for CEOs currently serving to undertake appropriate education and/or training to meet increased requirements.

5. *Upgraded Standards are Costly and May Limit Treatment Options for CHAMPUS Beneficiaries.* A number of commenters suggested that standards in the proposed rule were costly to implement. They argued that the increased cost of doing business, in addition to potential reductions in reimbursement caused by the rule's payment reforms, may cause some providers to drop participation in CHAMPUS programs. Commenters viewed this as a particular problem for providers with limited CHAMPUS volume and those in rural areas. Some commenters argued that treatment methods not relying upon a medical model should be expanded, rather than changed to conform.

Response. Standards in this final rule are based upon accepted standards of practice, requirements of the Joint Commission on Accreditation of Healthcare Organizations, and input from Department consultants and the provider community. Although we have made significant progress in addressing quality issues raised by GAO's study and highlighted in various forms, rapidly evolving practice patterns and treatment settings require CHAMPUS standards which reflect the character and pace of these changes. We believe these updated standards are necessary minimums which ensure CHAMPUS beneficiaries receive high quality care by appropriately trained professionals and staff. We believe the cost of upgraded standards will be accommodated within projected reimbursement rates. Facilities unable or unwilling to comply with these standards are not in a position to provide a proper standard of care.

6. *Implementation of Seclusion and Restraint.* We received a large number of comments objecting to standards which restricted implementation of seclusion and restraint to qualified mental health professionals. Additionally, the proposed rule excluded seclusion and restraint as behavior management devices in substance use disorder rehabilitation facilities. Commenters argued that these restrictions were unworkable, that they may pose safety issues when professional staff are not immediately available, and that facility staff are trained to use these techniques for behavior management.

Response. Seclusion and restraint imply a severity of dysfunction and need for treatment beyond the scope of care settings addressed in this rule. If seclusion and/or restraint is frequently required for behavior management in RTCs, PHPs, or SUDRFs, this suggests patients who require a more intense level of care. Facilities should evaluate policies and practices to determine their effectiveness in identifying patients who have not been assigned to the appropriate level of care. All facility staff should be trained in temporary holds which provide immediate intervention for safety of the patient and others. Also, facilities should have clear emergency response procedures which define appropriate intervention in crisis situations.

With the exception of brief physical holds and time outs, use of seclusion and restraint is excluded in SUDRFs, as patients who require this level of intervention are not appropriate to this treatment setting. The use of time out or physical holds should be infrequent, since behavior routinely requiring this type of intervention suggests a need for care at a higher level of intensity. We do agree that proposed rule language may have restricted appropriate response to emergency situations. We have added clarifying language which requires a qualified mental health professional to be responsible for implementation of seclusion and restraint, but allows actual implementation by facility staff under supervision of the responsible provider.

7. *Inclusion of Spiritual and Skills Assessments.* A number of commenters questioned inclusion of new requirements for spiritual and skills assessments in the proposed standards and requested more detailed description of this requirement.

Response. Spiritual assessments are part of a comprehensive, multidisciplinary assessment which should address the full range of a patient's clinical needs, including the impact of religious, ethnic and cultural influences upon the patient or family. Spiritual assessments, which occur in the context of obtaining a social history, are not new to the CHAMPUS standards and are included specifically in standards of other widely recognized accrediting bodies. A skills assessment is an important component of patient evaluation and includes activities of daily living, perceptual-motor skills, sensory integration factors, cognitive skills, communication skills, social interaction skills, creative abilities, vocational skills, and the impact of physical limitations. Activity services related to this assessment should be part of the therapeutic plan and should be supervised by a qualified mental health professional.

8. *Requirement for Clinical Formulation.* Several commenters questioned the need for clinical formulation in addition to development of a treatment plan. Additionally, several comments pointed out the standards allowed less time for completion of a treatment plan (10 days) than for development of the clinical formulation (14 days) which forms the basis of the treatment plan.

Response. The clinical formulation summarizes significant clinical interpretations from each of the multidisciplinary assessments, forming the basis for development of a master treatment plan. Interrelating findings from all assessments, the clinical formulation should clearly describe problems to be addressed in the treatment plan and indicate appropriate focus for the treatment strategies. We view this as a necessary, and not redundant, part of the process for developing a plan of care responsive to the unique requirements of each patient. We agree the proposed time requirements were not consistent with

this logic and have modified language accordingly.

Treatment plans must be completed within 10 days; clinical formulations no longer have a specific deadline, but must be completed prior to development of the interdisciplinary treatment plan.

9. *Family Therapy.* A large number of commenters raised the issue of logistical problems which present difficulty in accomplishing family therapy for CHAMPUS beneficiaries. An example frequently used was the deployment of military members which caused geographic separations. The argument was made that CHAMPUS should be more flexible regarding this requirement.

Response. Family therapy is not a new requirement for CHAMPUS beneficiaries. Geographical distance is not considered a reason to exclude the family from a treatment plan. For patients separated from their families by deployment or for other reasons, CHAMPUS allows geographically distant family therapy. If one or both parents reside a minimum of 250 miles from the RTC, the RTC has the flexibility to arrange for therapy with parents at the distant locality. If family therapy is clinically contraindicated, rationale for this conclusion must be documented in the patient's record.

10. *Annual Facility Evaluation.* We received several comments arguing that a service specific annual evaluation was overly burdensome to facilities and ''unheard of'' outside academic settings.

Response. The proposed rule identified this requirement in the context of facility development of a strategic plan which contains specific goals and objectives for each program component or service and patient population served. Sound business practices would suggest regular organizational assessments to identify progress toward established performance and fiscal goals and objectives. The Department, as well as other accrediting agencies, expect governing bodies, through their CEOs, to provide sufficient resources to achieve the organization's missions, goals, philosophy and objectives. Without a clear idea of resource allocation and performance across the range of services provided, it is unclear how facilities would evaluate outcomes, or the need for change. We do not agree that this is overly burdensome and find it surprising that such reviews would be limited only to academic settings.

11. *Education Hours in Partial Hospitalization Programs.* The proposed rule does not count educational hours towards total hours for ''full day'' partial hospitalization programs. Several commenters argued that, by not including time spent in school, those hours, combined with the required six hours for a full day partial program, result in an excessively long day for patients.

Response. Patients who meet the criteria for admission to partial hospitalization programs do not require a professionally managed milieu twenty-four hours a day, as do individuals in residential treatment programs. Therefore, we find it reasonable to expect that school hours may be accommodated separately from the hours spent in therapy and other treatment activities. Determinations as to school hours vs. time spent in treatment or other activities should be considered as part of an overall assessment of the patient's needs and addressed in an individualized treatment plan.

12. *Benefit Limitations.* One provider association objected to CHAMPUS limits on treatment of substance use disorders, stating that these limits do not consider the chronic nature of this problem.

Response. Compared to many third party payers, CHAMPUS provides one of the more generous benefits for treatment of substance use disorders. We do recognize the chronic as well as individual nature of these problems and, consistent with that, provide an allowance for waivers of benefit limits when continued treatment is justified.

13. *Burden and Expense Associated With Cost Based Reimbursement.* The overwhelming majority of comments on the proposed cost based reimbursement system argued that the cost and administrative burden associated with these changes, for both the Department and providers, far exceeded any benefit to the government. A number of commenters pointed out that the GAO reports which provided impetus for payment reform were based on outdated information which did not reflect the results of earlier initiatives. Commenters suggested that, if DoD is required to implement additional cost containment measures, these could be accomplished more efficiently through adjustments to existing payment mechanisms.

Response. After full consideration of comments from the provider community, as well as our continuing analysis of costs associated with implementation of a cost based system for mental health, we agree that implementation of the proposed system is not appropriate at this time. Although cost containment and utilization management programs have achieved program savings, we agree with GAO conclusion that additional improvements are needed. While the GAO report may not reflect the full measure of cost and quality improvements achieved by earlier efforts, continuing program reviews and findings gathered through utilization management programs suggest CHAMPUS mental health programs require additional controls.

In keeping with comments from the industry and our own analysis, additional cost containment in CHAMPUS mental health programs will be accomplished through adjustments to current reimbursement mechanisms. For specialty psychiatric hospitals and units, payment will be held at FY95 rates for two years, beginning in FY96 and extending through FY97. Additionally, April 6, 1995, payment will be capped at a rate not to exceed the 70th percentile of payment rates in all high volume CHAMPUS psychiatric hospitals. We estimate that these adjustments will result in CHAMPUS payments at the level of average aggregate costs for psychiatric hospitals and units, thereby addressing concerns expressed by the GAO.

The general lack of availability with respect to RTC cost information presented some difficulties in our attempt to analyze impact of payment reforms for this community. In measures similar to those for psychiatric hospitals, RTC payment rates for facilities at or above the 30th percentile of all CHAMPUS RTC payment rates in FY95 will be held constant, with no additional update through fiscal years FY96 and FY97. Additionally, effective April 6, 1995, payments will be capped at level not to exceed the 70th percentile of all RTC rates nationally. For those RTCs paid at levels below the 30th percentile of national CHAMPUS RTC rates, payments will be updated by the lesser of the CPI–U for medical care or the amount that brings the rate up to the 30th percentile level. The update factor for payments beginning in FY98 will be the Medicare update factor for hospitals and units exempt from the Medicare prospective payment system. In order to determine the effectiveness of RTC cost containment measures established in this final rule, the Department will continue to explore avenues for obtaining accurate cost data for RTC services.

V. Rulemaking Procedures

This rule is a significant regulatory action as determined by the Office of Management and Budget. Also, we certify that this rule will not significantly affect a large number of

small entities within the meaning of the Regulatory Flexibility Act.

This rule does not impose new information collection requirements.

List of Subjects in 32 CFR Part 199

Claims, handicapped, health insurance, and military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 is revised to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.4 is amended by revising the heading of paragraph (e)(4), paragraph (e)(4) introductory text, (e)(4)(i), (e)(4)(ii), (e)(4)(iv), and the introductory text of paragraph (f)(2)(ii), and by adding new paragraphs (e)(4)(v), and (f)(2)(ii)(D), as follows:

§ 199.4 Basic program benefits.

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(e) * * *

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(4) *Treatment of substance use disorders.* Emergency and inpatient hospital care for complications of alcohol and drug abuse or dependency and detoxification are covered as for any other medical condition. Specific coverage for the treatment of substance use disorders includes detoxification, rehabilitation, and outpatient care provided in authorized substance use disorder rehabilitation facilities.

(i) *Emergency and inpatient hospital services.* Emergency and inpatient hospital services are covered when medically necessary for the active medical treatment of the acute phases of substance abuse withdrawal (detoxification), for stabilization, and for treatment of medical complications of substance use disorders. Emergency and inpatient hospital services are considered medically necessary only when the patient's condition is such that the personnel and facilities of a hospital are required. Stays provided for substance use disorder rehabilitation in a hospital-based rehabilitation facility are covered, subject to the provisions of paragraph (e)(4)(ii) of this section. Inpatient hospital services also are subject to the provisions regarding the limit on inpatient mental health services.

(ii) *Authorized substance use disorder treatment.* Only those services provided by CHAMPUS-authorized institutional providers are covered. Such a provider must be either an authorized hospital, or an organized substance use disorder treatment program in an authorized free-standing or hospital-based substance use disorder rehabilitation facility. Covered services consist of any or all of the services listed below. A qualified mental health provider (physicians, clinical psychologists, clinical social workers, psychiatric nurse specialists) (see paragraph (c)(3)(ix) of this section) shall prescribe the particular level of treatment. Each CHAMPUS beneficiary is entitled to three substance use disorder treatment benefit periods in his or her lifetime, unless this limit is waived pursuant to paragraph (e)(4)(v) of this section. (A benefit period begins with the first date of covered treatment and ends 365 days later, regardless of the total services actually used within the benefit period. Unused benefits cannot be carried over to subsequent benefit periods. Emergency and inpatient hospital services (as described in paragraph (e)(4)(i) of this section) do not constitute substance abuse treatment for purposes of establishing the beginning of a benefit period.)

(A) *Rehabilitative care.* Rehabilitative care in a authorized hospital or substance use disorder rehabilitative facility, whether free-standing or hospital-based, is covered on either a residential or partial care (day or night program) basis. Coverage during a single benefit period is limited to no more than inpatient stay (exclusive of stays classified in DRG 433) in hospitals subject to CHAMPUS DRG-based payment system or 21 days in a DRG-exempt facility for rehabilitation care, unless the limit is waived pursuant to paragraph (e)(4)(v) of this section. If the patient is medically in need of chemical detoxification, but does not require the personnel or facilities of a general hospital setting, detoxification services are covered in addition to the rehabilitative care, but in a DRG-exempt facility detoxification services are limited to 7 days unless the limit is waived pursuant to paragraph (e)(4)(v) of this section. The medical necessity for the detoxification must be documented. Any detoxification services provided by the substance use disorder rehabilitation facility must be under general medical supervision.

(B) *Outpatient care.* Outpatient treatment provided by an approved substance use disorder rehabilitation facility, whether free-standing or hospital-based, is covered for up to 60 visits in a benefit period, unless the limit is waived pursuant to paragraph (e)(4)(v) of this section.

(C) *Family therapy.* Family therapy provided by an approved substance use disorder rehabilitation facility, whether free-standing or hospital-based, is covered for up to 15 visits in a benefit period, unless the limit is waived pursuant to paragraph (e)(4)(v) of this section.

* * * * *

(iv) *Confidentialty.* Release of any patient identifying information, including that required to adjudicate a claim, must comply with the provisions of section 544 of the Public Health Service Act, as amended, (42 U.S.C. 290dd–3), which governs the release of medical and other information from the records of patients undergoing treatment of substance abuse. If the patient refuses to authorize the release of medical records which are, in the opinion of the Director, OCHAMPUS, or a designee, necessary to determine benefits on a claim for treatment of substance abuse the claim will be denied.

(v) *Waiver of benefit limits.* The specific benefit limits set forth in paragraphs (e)(4)(ii) of this section may be waived by the Director, OCHAMPUS in special cases based on a determination that all of the following criteria are met:

(A) Active treatment has taken place during the period of the benefit limit and substantial progress has been made according to the plan of treatment.

(B) Further progress has been delayed due to the complexity of the illness.

(C) Specific evidence has been presented to explain the factors that interfered with further treatment progress during the period of the benefit limit.

(D) The waiver request includes specific time frames and a specific plan of treatment which will complete the course of treatment.

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(f) * * *

(2) * * *

(ii) *Inpatient cost-sharing.* Except in the case of mental health services (see paragraph (f)(2)(ii)(D) of this section), dependents of active duty members of the Uniformed Services or their sponsors are responsible for the payment of the first $25 of the allowable institutional costs incurred with each covered inpatient admission to a hospital or other authorized institutional provider (refer to § 199.6), or the amount the beneficiary or sponsor would have been charged had the inpatient care been provided in a Uniformed Service hospital, whichever is greater.

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(D) *Inpatient cost-sharing for mental health services.* For care provided on or after October 1, 1995, the inpatient cost-sharing for mental health services is $20 per day for each day of the inpatient admission. This $20 per day cost

sharing amount applies to admissions to any hospital for mental health services, any residential treatment facility, any substance abuse rehabilitation facility, and any partial hospitalization program providing mental health or substance use disorder rehabilitation services.

* * * * *

3. Section 199.6 is amended by revising paragraphs (b)(4)(vii) and (b)(4)(xii), by removing paragraph (b)(4)(x)(B)(*3*), and by adding a new paragraph (b)(4)(xiv) to read as follows:

§ 199.6 Authorized providers.

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(b) *Institutional providers.* * * *

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(4) *Categories of institutional providers.* * * *

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(vii) *Residential treatment centers.* This paragraph (b)(4)(vii) establishes standards and requirements for residential treatment centers (RTCs).

(A) *Organization and administration.*

(*1*) *Definition.* A Residential Treatment Center (RTC) is a facility or a distinct part of a facility that provides to beneficiaries under 21 years of age a medically supervised, interdisciplinary program of mental health treatment. An RTC is appropriate for patients whose predominant symptom presentation is essentially stabilized, although not resolved, and who have persistent dysfunction in major life areas. The extent and pervasiveness of the patient's problems require a protected and highly structured therapeutic environment. Residential treatment is differentiated from:

(*i*) Acute psychiatric care, which requires medical treatment and 24-hour availability of a full range of diagnostic and therapeutic services to establish and implement an effective plan of care which will reverse life-threatening and/or severely incapacitating symptoms;

(*ii*) Partial hospitalization, which provides a less than 24-hour-per-day, seven-day-per-week treatment program for patients who continue to exhibit psychiatric problems but can function with support in some of the major life areas;

(*iii*) A group home, which is a professionally directed living arrangement with the availability of psychiatric consultation and treatment for patients with significant family dysfunction and/or chronic but stable psychiatric disturbances;

(*iv*) Therapeutic school, which is an educational program supplemented by psychological and psychiatric services;

(*v*) Facilities that treat patients with a primary diagnosis of chemical abuse or dependence; and

(*vi*) Facilities providing care for patients with a primary diagnosis of mental retardation or developmental disability.

(*2*) Eligibility.

(*i*) Every RTC must be certified pursuant to CHAMPUS certification standards. Such standards shall incorporate the basic standards set forth in paragraphs (b)(4)(vii) (A) through (D) of this section, and shall include such additional elaborative criteria and standards as the Director, OCHAMPUS determines are necessary to implement the basic standards.

(*ii*) To be eligible for CHAMPUS certification, the facility is required to be licensed and fully operational for six months (with a minimum average daily census of 30 percent of total bed capacity) and operate in substantial compliance with state and federal regulations.

(*iii*) The facility is currently accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) under the current edition of the Manual for Mental Health, Chemical Dependency, and Mental Retardation/Developmental Disabilities Services which is available from JCAHO, P.O. Box 75751, Chicago, IL 60675.

(*iv*) The facility has a written participation agreement with OCHAMPUS. The RTC is not a CHAMPUS-authorized provider and CHAMPUS benefits are not paid for services provided until the date upon which a participation agreement is signed by the Director, OCHAMPUS.

(*3*) *Governing body.*

(*i*) The RTC shall have a governing body which is responsible for the policies, bylaws, and activities of the facility. If the RTC is owned by a partnership or single owner, the partners or single owner are regarded as the governing body. The facility will provide an up-to-date list of names, addresses, telephone numbers and titles of the members of the governing body.

(*ii*) The governing body ensures appropriate and adequate services for all patients and oversees continuing development and improvement of care. Where business relationships exist between the governing body and facility, appropriate conflict-of-interest policies are in place.

(*iii*) Board members are fully informed about facility services and the governing body conducts annual review of its performance in meeting purposes, responsibilities, goals and objectives.

(*4*) *Chief executive officer.* The chief executive officer, appointed by and subject to the direction of the governing body, shall assume overall administrative responsibility for the operation of the facility according to governing body policies. The chief executive officer shall have five years' administrative experience in the field of mental health. On October 1, 1997, the CEO shall possess a degree in business administration, public health, hospital administration, nursing, social work, or psychology, or meeting similar educational requirements as prescribed by the Director, OCHAMPUS.

(*5*) *Clinical Director.* The clinical director, appointed by the governing body, shall be a psychiatrist or doctoral level psychologist who meets applicable CHAMPUS requirements for individual professional providers and is licensed to practice in the state where the residential treatment center is located. The clinical director shall possess requisite education and experience, credentials applicable under state practice and licensing laws appropriate to the professional discipline, and a minimum of five years' clinical experience in the treatment of children and adolescents. The clinical director shall be responsible for planning, development, implementation, and monitoring of all clinical activities.

(*6*) *Medical director.* The medical director, appointed by the governing body, shall be licensed to practice medicine in the state where the residential treatment center is located and shall possess requisite education and experience, including graduation from an accredited school of medicine or osteopathy, an approved residency in psychiatry and a minimum of five years clinical experience in the treatment of children and adolescents. The Medical Director shall be responsible for the planning, development, implementation, and monitoring of all activities relating to medical treatment of patients. If qualified, the Medical Director may also serve as Clinical Director.

(*7*) *Medical or professional staff organization.* The governing body shall establish a medical or professional staff organization to assure effective implementation of clinical privileging, professional conduct rules, and other activities directly affecting patient care.

(*8*) *Personnel policies and records.* The RTC shall maintain written personnel policies, updated job descriptions and personnel records to assure the selection of qualified personnel and successful job performance of those personnel.

(*9*) *Staff development.* The facility shall provide appropriate training and development programs for administrative, professional support, and direct care staff.

(*10*) *Fiscal accountability.* The RTC shall assure fiscal accountability to applicable government authorities and patients.

(*11*) *Designated teaching facilities.* Students, residents, interns or fellows providing direct clinical care are under the supervision of a qualified staff member approved by an accredited university. The teaching program is approved by the Director, OCHAMPUS.

(*12*) *Emergency reports and records.* The facility notifies OCHAMPUS of any serious occurrence involving CHAMPUS beneficiaries.

(B) *Treatment services.*

(*1*) Staff composition.

(*i*) The RTC shall follow written plans which assure that medical and clinical patient needs will be appropriately addressed 24 hours a day, seven days a week by a sufficient number of fully qualified (including license, registration or certification requirements, educational attainment, and professional experience) health care professionals and support staff in the respective disciplines. Clinicians providing individual, group, and family therapy meet CHAMPUS requirements as qualified mental health providers and operate within the scope of their licenses. The ultimate authority for planning, development, implementation, and monitoring of all clinical activities is vested in a psychiatrist or doctoral level psychologist. The management of medical care is vested in a physician.

(*ii*) The RTC shall ensure adequate coverage by fully qualified staff during all hours of operation, including physician availability, other professional staff coverage, and support staff in the respective disciplines.

(*2*) *Staff qualifications.* The RTC will have a sufficient number of qualified mental health providers, administrative, and support staff to address patients' clinical needs and to coordinate the services provided. RTCs which employ individuals with master's or doctoral level degrees in a mental health discipline who do not meet the licensure, certification and experience requirements for a qualified mental health provider but are actively working toward licensure or certification, may provide services within the all-inclusive per diem rate, provided the individual works under the clinical supervision of a fully qualified mental health provider employed by the RTC. All other program services shall be provided by trained, licensed staff.

(*3*) *Patient rights.*

(*i*) The RTC shall provide adequate protection for all patient rights, including rights provided by law, privacy, personnel rights, safety, confidentiality, informed consent, grievances, and personal dignity.

(*ii*) The facility has a written policy regarding patient abuse and neglect.

(*iii*) Facility marketing and advertising meets professional standards.

(*4*) *Behavioral management.* The RTC shall adhere to a comprehensive, written plan of behavioral management, developed by the clinical director and the medical or professional staff and approved by the governing body, including strictly limited procedures to assure that the restraint or seclusion are used only in extraordinary circumstances, are carefully monitored, and are fully documented. Only trained and clinically privileged RNs or qualified mental health professionals may be responsible for the implementation of seclusion and restraint procedures in an emergency situation.

(*5*) *Admission process.* The RTC shall maintain written policies and procedures to ensure that, prior to an admission, a determination is made, and approved pursuant to CHAMPUS preauthorization requirements, that the admission is medically and/or psychologically necessary and the program is appropriate to meet the patient's needs. Medical and/or psychological necessity determinations shall be rendered by qualified mental health professionals who meet CHAMPUS requirements for individual professional providers and who are permitted by law and by the facility to refer patients for admission.

(*6*) *Assessments.* The professional staff of the RTC shall complete a current multidisciplinary assessment which includes, but is not limited to physical, psychological, developmental, family, educational, social, spiritual and skills assessment of each patient admitted. Unless otherwise specified, all required clinical assessments are completed prior to development of the multidisciplinary treatment plan.

(*7*) *Clinical formulation.* A qualified mental health professional of the RTC will complete a clinical formulation on all patients. The clinical formulation will be reviewed and approved by the responsible individual professional provider and will incorporate significant findings from each of the multidisciplinary assessments. It will provide the basis for development of an interdisciplinary treatment plan.

(*8*) *Treatment planning.* A qualified mental health professional shall be responsible for the development, supervision, implementation, and assessment of a written, individualized, interdisciplinary plan of treatment, which shall be completed within 10 days of admission and shall include individual, measurable, and observable goals for incremental progress and discharge. A preliminary treatment plan is completed within 24 hours of admission and includes at least an admission note and orders written by the admitting mental health professional. The master treatment plan is reviewed and revised at least every 30 days, or when major changes occur in treatment.

(*9*) *Discharge and transition planning.* The RTC shall maintain a transition planning process to address adequately the anticipated needs of the patient prior to the time of discharge. The planning involves determining necessary modifications in the treatment plan, facilitating the termination of treatment, and identifying resources to maintain therapeutic stability following discharge.

(*10*) *Clinical documentation.* Clinical records shall be maintained on each patient to plan care and treatment and provide ongoing evaluation of the patient's progress. All care is documented and each clinical record contains at least the following: demographic data, consent forms, pertinent legal documents, all treatment plans and patient assessments, consultation and laboratory reports, physician orders, progress notes, and a discharge summary. All documentation will adhere to applicable provisions of the JCAHO and requirements set forth in § 199.7(b)(3). An appropriately qualified records administrator or technician will supervise and maintain the quality of the records. These requirements are in addition to other records requirements of this Part, and documentation requirements of the Joint Commission on Accreditation of Healthcare Organizations.

(*11*) *Progress notes.* RTC's shall document the course of treatment for patients and families using progress notes which provide information to review, analyze, and modify the treatment plans. Progress notes are legible, contemporaneous, sequential, signed and dated and adhere to applicable provisions of the Manual of Mental Health, Chemical Dependency, and Mental Retardation/Development Disabilities Services and requirements set forth in § 199.7(b)(3).

(*12*) *Therapeutic services.*

(*i*) Individual, group, and family psychotherapy are provided to all patients, consistent with each patient's treatment plan, by qualified mental health providers.

(*ii*) A range of therapeutic activities, directed and staffed by qualified

personnel, are offered to help patients meet the goals of the treatment plan.

(*iii*) Therapeutic educational services are provided or arranged that are appropriate to the patients educational and therapeutic needs.

(*13*) *Ancillary services.* A full range of ancillary services is provided. Emergency services include policies and procedures for handling emergencies with qualified personnel and written agreements with each facility providing the service. Other ancillary services include physical health, pharmacy and dietary services.

(C) *Standards for physical plant and environment.*

(*1*) *Physical environment.* The buildings and grounds of the RTC shall be maintained so as to avoid health and safety hazards, be supportive of the services provided to patients, and promote patient comfort, dignity, privacy, personal hygiene, and personal safety.

(*2*) *Physical plant safety.* The RTC shall be of permanent construction and maintained in a manner that protects the lives and ensures the physical safety of patients, staff, and visitors, including conformity with all applicable building, fire, health, and safety codes.

(*3*) *Disaster planning.* The RTC shall maintain and rehearse written plan for taking care of casualities and handling other consequences arising from internal and external disasters.

(D) *Standards for evaluation system.*

(*1*) *Quality assessment and improvement.* The RTC shall develop and implement a comprehensive quality assurance and quality improvement program that monitors the quality, efficiency, appropriateness, and effectiveness of the care, treatments, and services it provides for patients and their families, primarily utilizing explicit clinical indicators to evaluate all functions of the RTC and contribute to an ongoing process of program improvement. The clinical director is responsible for developing and implementing quality assessment and improvement activities throughout the facility.

(*2*) *Utilization review.* The RTC shall implement a utilization review process, pursuant to a written plan approved by the professional staff, the administration, and the governing body, that assesses the appropriateness of admission, continued stay, and timeliness of discharge as part of an effort to provide quality patient care in a cost-effective manner. Findings of the utilization review process are used as a basis for revising the plan of operation, including a review of staff qualifications and staff composition.

(*3*) *Patient records review.* The RTC shall implement a process, including monthly reviews of a representative sample of patient records, to determine the completeness and accuracy of the patient records and the timeliness and pertinence of record entries, particularly with regard to regular recording of progress/non-progress in treatment.

(*4*) *Drug utilization review.* The RTC shall implement a comprehensive process for the monitoring and evaluating of the prophylactic, therapeutic, and empiric use of drugs to assure that medications are provided appropriately, safely, and effectively.

(*5*) *Risk management.* The RTC shall implement a comprehensive risk management program, fully coordinated with other aspects of the quality assurance and quality improvement program, to prevent and control risks to patients and staff and costs associated with clinical aspects of patient care and safety.

(*6*) *Infection control.* The RTC shall implement a comprehensive system for the surveillance, prevention, control, and reporting of infections acquired or brought into the facility.

(*7*) *Safety.* The RTC shall implement an effective program to assure a safe environment for patients, staff, and visitors, including an incident report system, a continuous safety surveillance system, and an active multidisciplinary safety committee.

(*8*) *Facility evaluation.* The RTC annually evaluates accomplishment of the goals and objectives of each clinical program and service of the RTC and reports findings and recommendations to the governing body.

(E) *Participation agreement requirements.* In addition to other requirements set forth in paragraph (b)(4)(vii), of this section in order for the services of an RTC to be authorized, the RTC shall have entered into a Participation Agreement with OCHAMPUS. The period of a participation agreement shall be specified in the agreement, and will generally be for not more than five years. Participation agreements entered into prior April 6, 1995 must be renewed not later than October 1, 1995. In addition to review of a facility's application and supporting documentation, an on-site inspection by OCHAMPUS authorized personnel may be required prior to signing a Participation Agreement. Retroactive approval is not given. In addition, the Participation Agreement shall include provisions that the RTC shall, at a minimum:

(*1*) Render residential treatment center impatient services to eligible CHAMPUS beneficiaries in need of such services, in accordance with the participation agreement and CHAMPUS regulation;

(*2*) Accept payment for its services based upon the methodology provided in § 199.14(f) or such other method as determined by the Director, OCHAMPUS;

(*3*) Accept the CHAMPUS all-inclusive per diem rate as payment in full and collect from the CHAMPUS beneficiary or the family of the CHAMPUS beneficiary only those amounts that represent the beneficiary's liability, as defined in section 199.4, and charges for services and supplies that are not a benefit of CHAMPUS;

(*4*) Make all reasonable efforts acceptable to the Director, OCHAMPUS, to collect those amounts, which represents the beneficiary's liability, as defined in § 199.4;

(*5*) Comply with the provisions of § 199.8, and submit claims first to all health insurance coverage to which the beneficiary is entitled that is primary to CHAMPUS;

(*6*) Submit claims for services provided to CHAMPUS beneficiaries at least 30 days (except to the extent a delay is necessitated by efforts to first collect from other health insurance). If claims are not submitted at least every 30 days, the RTC agrees not to bill the beneficiary or the beneficiary's family for any amounts disallowed by CHAMPUS;

(*7*) Certify that:

(*i*) It is and will remain in compliance with the provisions of paragraph (b)(4)(vii) of this section establishing standards for Residential Treatment Centers;

(*ii*) It has conducted a self assessment of the facility's compliance with the CHAMPUS Standards for Residential Treatment Centers Serving Children and Adolescents with Mental Disorders, as issued by the Director, OCHAMPUS and notified the Director, OCHAMPUS of any matter regarding which the facility is not in compliance with such standards; and

(*iii*) It will maintain compliance with the CHAMPUS Standards for Residential Treatment Centers Serving Children and Adolescents with Mental Disorders, as issued by the Director, OCHAMPUS, except for any such standards regarding which the facility notifies the Director, OCHAMPUS that it is not in compliance.

(*8*) Designate an individual who will act as liaison for CHAMPUS inquiries. The RTC shall inform OCHAMPUS in writing of the designated individual;

(*9*) Furnish OCHAMPUS, as requested by OCHAMPUS, with cost data certified

by an independent accounting firm or other agency as authorized by the Director, OCHAMPUS;

(*10*) Comply with all requirements of this section applicable to institutional providers generally concerning preauthorization, concurrent care review, claims processing, beneficiary liability, double coverage, utilization and quality review and other matters;

(*11*) Grant the Director, OCHAMPUS, or designee, the right to conduct quality assurance audits or accounting audits with full access to patients and records (including records relating to patients who are not CHAMPUS beneficiaries) to determine the quality and cost-effectiveness of care rendered. The audits may be conducted on a scheduled or unscheduled (unannounced) basis. This right to audit/review includes, but is not limited to:

(*i*) Examination of fiscal and all other records of the RTC which would confirm compliance with the participation agreement and designation as an authorized CHAMPUS RTC provider;

(*ii*) Conducting such audits of RTC records including clinical, financial, and census records, as may be necessary to determine the nature of the services being provided, and the basis for charges and claims against the United States for services provided CHAMPUS beneficiaries;

(*iii*) Examining reports of evaluations and inspections conducted by federal, state and local government, and private agencies and organizations;

(*iv*) Conducting on-site inspections of the facilities of the RTC and interviewing employees, members of the staff, contractors, board members, volunteers, and patients, as required;

(*v*) Audits conducted by the United States General Accounting Office.

(F) *Other requirements applicable to RTCs.*

(*1*) Even though an RTC may qualify as a CHAMPUS-authorized provider and may have entered into a participation agreement with CHAMPUS, payment by CHAMPUS for particular services provided is contingent upon the RTC also meeting all conditions set forth in section 199.4 especially all requirements of paragraph (b)(4) of that section.

(*2*) The RTC shall provide inpatient services to CHAMPUS beneficiaries in the same manner it provides inpatient services to all other patients. The RTC may not discriminate against CHAMPUS beneficiaries in any manner, including admission practices, placement in special or separate wings or rooms, or provisions of special or limited treatment.

(*3*) The RTC shall assure that all certifications and information provided to the Director, OCHAMPUS incident to the process of obtaining and retaining authorized provider status is accurate and that it has no material errors or omissions. In the case of any misrepresentations, whether by inaccurate information being provided or material facts withheld, authorized status will be denied or terminated, and the RTC will be ineligible for consideration for authorized provider status for a two year period.

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(xii) *Psychiatric partial hospitalization programs.* Paragraph (b)(4)(xii) of this section establishes standards and requirements for psychiatric partial hospitalization programs.

(A) *Organization and administration.*

(*1*) *Definition.* Partial hospitalization is defined as a time-limited, ambulatory, active treatment program that offers therapeutically intensive, coordinated, and structured clinical services within a stable therapeutic milieu. Partial hospitalization programs serve patients who exhibit psychiatric symptoms, disturbances of conduct, and decompensating conditions affecting mental health.

(*2*) *Eligibility.*

(*i*) Every psychiatric partial hospitalization program must be certified pursuant to CHAMPUS certification standards. Such standards shall incorporate the basic standards set forth in paragraphs (b)(4)(xii) (A) through (D) of this section, and shall include such additional elaborative criteria and standards as the Director, OCHAMPUS determines are necessary to implement the basic standards. Each psychiatric partial hospitalization program must be either a distinct part of an otherwise authorized institutional provider or a freestanding program.

(*ii*) To be eligible for CHAMPUS certification, the facility is required to be licensed and fully operational for a period of at least six months (with a minimum patient census of at least 30 percent of bed capacity) and operate in substantial compliance with state and federal regulations.

(*iii*) The facility is currently accredited by the Joint Commission on Accreditation of Healthcare Organizations under the current edition of the Accreditation Manual for Mental Health, Chemical Dependency, and Mental Retardation/Developmental Disabilities Services.

(*iv*) The facility has a written participation agreement with OCHAMPUS. On October 1, 1995, the PHP is not a CHAMPUS-authorized provider and CHAMPUS benefits are not paid for services provided until the date upon which a participation agreement is signed by the Director, OCHAMPUS. Partial hospitalization is capable of providing an interdisciplinary program of medical and therapeutic services a minimum of three hours per day, five days per week, and may include full- or half-day, evening, and weekend treatment programs.

(*3*) *Governing body.*

(*i*) The PHP shall have a governing body which is responsible for the policies, bylaws, and activities of the facilities. If the PHP is owned by a partnership or single owner, the partners or single owner are regarded as the governing body. The facility will provide an up-to-date list of names, addresses, telephone numbers, and titles of the members of the governing body.

(*ii*) The governing body ensures appropriate and adequate services for all patients and oversees continuing development and improvement of care. Where business relationships exist between the governing body and facility, appropriate conflict-of-interest policies are in place.

(*iii*) Board members are fully informed about facility services and the governing body conducts annual review of its performance in meeting purposes, responsibilities, goals and objectives.

(*4*) *Chief executive officer.* The Chief Executive Officer, appointed by and subject to the direction of the governing body, shall assume overall administrative responsibility for the operation of the facility according to governing body policies. The chief executive officer shall have five years' administrative experience in the field of mental health. On October 1, 1997, the CEO shall possess a degree in business administration, public health, hospital administration, nursing, social work, or psychology, or meet similar educational requirements as prescribed by the Director, OCHAMPUS.

(*5*) *Clinical Director.* The clinical director, appointed by the governing body, shall be a psychiatrist or doctoral level psychologist who meets applicable CHAMPUS requirements for individual professional providers and is licensed to practice in the state where the PHP is located. The clinical director shall possess requisite education and experience, credentials applicable under state practice and licensing laws appropriate to the professional discipline, and a minimum of five years' clinical experience in the treatment of mental disorders specific to the ages and

disabilities of the patients served. The clinical director shall be responsible for planning, development, implementation, and monitoring of all clinical activities.

(*6*) *Medical director.* The medical director, appointed by the governing body, shall be licensed to practice medicine in the state where the residential treatment center is located and shall possess requisite education and experience, including graduation from an accredited school of medicine or osteopathy, an approved residency in psychiatry and a minimum of five years clinical experience in the treatment of mental disorders specific to the ages and disabilities of the patients served. The Medical Director shall be responsible for the planning, development, implementation, and monitoring of all activities relating to medical treatment of patients. If qualified, the Medical Director may also serve as Clinical Director.

(*7*) *Medical or professional staff organization.* The governing body shall establish a medical or professional staff organization to assure effective implementation of clinical privileging, professional conduct rules, and other activities directly affecting patient care.

(*8*) *Personnel policies and records.* The PHP shall maintain written personnel policies, updated job descriptions, personnel records to assure the selection of qualified personnel and successful job performance of those personnel.

(*9*) *Staff development.* The facility shall provide appropriate training and development programs for administrative, professional support, and direct care staff.

(*10*) *Fiscal accountability.* The PHP shall assure fiscal accountability to applicable government authorities and patients.

(*11*) *Designated teaching facilities.* Students, residents, interns, or fellows providing direct clinical care are under the supervision of a qualified staff member approved by an accredited university. The teaching program is approved by the Director, OCHAMPUS.

(*12*) *Emergency reports and records.* The facility notifies OCHAMPUS of any serious occurrence involving CHAMPUS beneficiaries.

(B) *Treatment services.*

(*1*) *Staff composition.*

(*i*) The PHP shall ensure that patient care needs will be appropriately addressed during all hours of operation by a sufficient number of fully qualified (including license, registration or certification requirements, educational attainment, and professional experience) health care professionals. Clinicians providing individual, group, and family therapy meet CHAMPUS requirements as qualified mental health providers, and operate within the scope of their licenses. The ultimate authority for managing care is vested in a psychiatrist or licensed doctor level psychologist. The management of medical care is vested in a physician.

(*ii*) The PHP shall establish and follow written plans to assure adequate staff coverage during all hours of operation, including physician availability, other professional staff coverage, and support staff in the respective disciplines.

(*2*) *Staff qualifications.* The PHP will have a sufficient number of qualified mental health providers, administrative, and support staff to address patients' clinical needs and to coordinate the services provided. PHPs which employ individuals with master's or doctoral level degrees in a mental health discipline who do not meet the licensure, certification and experience requirements for a qualified mental health provider but are actively working toward licensure or certification, may provide services within the all-inclusive per diem rate, provided the individual works under the clinical supervision of a fully qualified mental health provider employed by the PHP. All other program services shall be provided by trained, licensed staff.

(*3*) *Patient rights.*

(*i*) The PHP shall provide adequate protection for all patient rights, including rights provided by law, privacy, personal rights, safety, confidentiality, informed consent, grievances, and personal dignity.

(*ii*) The facility has a written policy regarding patient abuse and neglect.

(*iii*) Facility marketing and advertising meets professional standards.

(*4*) *Behavioral management.* The PHP shall adhere to a comprehensive, written plan of behavior management, developed by the clinical director and the medical or professional staff and approved by the governing body, including strictly limited procedures to assure that restraint or seclusion are used only in extraordinary circumstances, are carefully monitored, and are fully documented. Only trained and clinically privileged RNs or qualified mental health professionals may be responsible for implementation of seclusion and restraint procedures in an emergency situation.

(*5*) *Admission process.* The PHP shall maintain written policies and procedures to ensure that prior to an admission, a determination is made, and approved pursuant to CHAMPUS preauthorization requirements, that the admission is medically and/or psychologically necessary and the program is appropriate to meet the patient's needs. Medical and/or psychological necessity determinations shall be rendered by qualified mental health professionals who meet CHAMPUS requirements for individual professional providers and who are permitted by law and by the facility to refer patients for admission.

(*6*) *Assessments.* The professional staff of the PHP shall complete a multidisciplinary assessment which includes, but is not limited to physical health, psychological health, physiological, developmental, family, educational, spiritual, and skills assessment of each patient admitted. Unless otherwise specified, all required clinical assessment are completed prior to development of the interdisciplinary treatment plan.

(*7*) *Clinical formulation.* A qualified mental health provider of the PHP will complete a clinical formulation on all patients. The clinical formulation will be reviewed and approved by the responsible individual professional provider and will incorporate significant findings from each of the multidisciplinary assessments. It will provide the basis for development of an interdisciplinary treatment plan.

(*8*) *Treatment planning.* A qualified mental health professional with admitting privileges shall be responsible for the development, supervision, implementation, and assessment of a written, individualized, interdisciplinary plan of treatment, which shall be completed by the fifth day following admission to a full-day PHP, or by the seventh day following admission to a half-day PHP, and shall include measurable and observable goals for incremental progress and discharge. The treatment plan shall undergo review at least every two weeks, or when major changes occur in treatment.

(*9*) *Discharge and transition planning.* The PHP shall develop an individualized transition plan which addresses anticipated needs of the patient at discharge. The transition plan involves determining necessary modifications in the treatment plan, facilitating the termination of treatment, and identifying resources for maintaining therapeutic stability following discharge.

(*10*) *Clinical documentation.* Clinical records shall be maintained on each patient to plan care and treatment and provide ongoing evaluation of the patient's progress. All care is documented and each clinical record contains at least the following: demographic data, consent forms,

pertinent legal documents, all treatment plans and patient assessments, consultation and laboratory reports, physician orders, progress notes, and a discharge summary. All documentation will adhere to applicable provisions of the JCAHO and requirements set forth in § 199.7(b)(3). An appropriately qualified records administrator or technician will supervise and maintain the quality of the records. These requirements are in addition to other records requirements of this Part, and documentation requirements of the Joint Commission on Accreditation of Health Care Organization.

(*11*) *Progress notes.* PHPs shall document the course of treatment for patients and families using progress notes which provide information to review, analyze, and modify the treatment plans. Progress notes are legible, contemporaneous, sequential, signed and dated and adhere to applicable provisions of the Manual for Mental Health, Chemical Dependency, and Mental Retardation/Developmental Disabilities Services and requirements set forth in section 199.7(b)(3).

(*12*) *Therapeutic services.*

(*i*) Individual, group, and family therapy are provided to all patients, consistent with each patient's treatment plan by qualified mental health providers.

(*ii*) A range of therapeutic activities, directed and staffed by qualified personnel, are offered to help patients meet the goals of the treatment plan.

(*iii*) Educational services are provided or arranged that are appropriate to the patient's needs.

(*13*) *Ancillary services.* A full range of ancillary services are provided. Emergency services include policies and procedures for handling emergencies with qualified personnel and written agreements with each facility providing these services. Other ancillary services include physical health, pharmacy and dietary services.

(C) *Standards for physical plant and environment.*

(*1*) *Physical environment.* The buildings and grounds of the PHP shall be maintained so as to avoid health and safety hazards, be supportive of the services provided to patients, and promote patient comfort, dignity, privacy, personal hygiene, and personal safety.

(*2*) *Physical plant safety.* The PHP shall be of permanent construction and maintained in a manner that protects the lives and ensures the physical safety of patients, staff, and visitors, including conformity with all applicable building, fire, health, and safety codes.

(*3*) *Disaster planning.* The PHP shall maintain and rehearse written plans for taking care of casualities and handling other consequences arising from internal and external disasters.

(D) *Standards for evaluation system.*

(*1*) *Quality assessment and improvement.* The PHP shall develop and implement a comprehensive quality assurance and quality improvement program that monitors the quality, efficiency, appropriateness, and effectiveness of care, treatments, and services the PHP provides for patients and their families. Explicit clinical indicators shall be used to be used to evaluate all functions of the PHP and contribute to an ongoing process of program improvement. The clinical director is responsible for developing and implementing quality assessment and improvement activities throughout the facility.

(*2*) *Utilization review.* The PHP shall implement a utilization review process, pursuant to a written plan approved by the professional staff, the administration and the governing body, that assesses distribution of services, clinical necessity of treatment, appropriateness of admission, continued stay, and timeliness of discharge, as part of an overall effort to provide quality patient care in a cost-effective manner. Findings of the utilization review process are used as a basis for revising the plan of operation, including a review of staff qualifications and staff composition.

(*3*) *Patient records.* The PHP shall implement a process, including regular monthly reviews of a representative sample of patient records, to determine completeness, accuracy, timeliness of entries, appropriate signatures, and pertinence of clinical entries. Conclusions, recommendations, actions taken, and the results of actions are monitored and reported.

(*4*) *Drug utilization review.* The PHP shall implement a comprehensive process for the monitoring and evaluating of the prophylactic, therapeutic, and empiric use of drugs to assure that medications are provided appropriately, safely, and effectively.

(*5*) *Risk management.* The PHP shall implement a comprehensive risk management program, fully coordinated with other aspects of the quality assurance and quality improvement program, to prevent and control risks to patients and staff, and to minimize costs associated with clinical aspects of patient care and safety.

(*6*) *Infection control.* The PHP shall implement a comprehensive system for the surveillance, prevention, control, and reporting of infections acquired or brought into the facility.

(*7*) *Safety.* The PHP shall implement an effective program to assure a safe environment for patients, staff, and visitors, including an incident reporting system, disaster training and safety education, a continuous safety surveillance system, and an active multidisciplinary safety committee.

(*8*) *Facility evaluation.* The PHP annually evaluates accomplishment of the goals and objectives of each clinical program component or facility service of the PHP and reports findings and recommendations to the governing body.

(E) *Participation agreement requirements.* In addition to other requirements set forth in paragraph (b)(4)(xii) of this section, in order for the services of a PHP to be authorized, the PHP shall have entered into a Participation Agreement with OCHAMPUS. The period of a Participation Agreement shall be specified in the agreement, and will generally be for not more than five years. On October 1, 1995, the PHP shall not be considered to be a CHAMPUS authorized provider and CHAMPUS payments shall not be made for services provided by the PHP until the date the participation agreement is signed by the Director, OCHAMPUS. In addition to review of a facility's application and supporting documentation, an on-site inspection by OCHAMPUS authorized personnel may be required prior to signing a participation agreement. The Participation Agreement shall include at least the following requirements:

(*1*) Render partial hospitalization program services to eligible CHAMPUS beneficiaries in need of such services, in accordance with the participation agreement and CHAMPUS regulation.

(*2*) Accept payment for its services based upon the methodology provided in section 199.14, or such other method as determined by the Director, OCHAMPUS;

(*3*) Accept the CHAMPUS all-inclusive per diem rate as payment in full and collect from the CHAMPUS beneficiary or the family of the CHAMPUS beneficiary only those amounts that represent the beneficiary's liability, as defined in § 199.4, and charges for services and supplies that are not a benefit of CHAMPUS;

(*4*) Make all reasonable efforts acceptable to the Director, OCHAMPUS, to collect those amounts, which represent the beneficiary's liability, as defined in § 199.4;

(*5*) Comply with the provisions of § 199.8, and submit claims first to all health insurance coverage to which the beneficiary is entitled that is primary to CHAMPUS;

(*6*) Submit claims for services provided to CHAMPUS beneficiaries at least every 30 days (except to the extent a delay is necessitated by efforts to first collect from other health insurance). If claims are not submitted at least every 30 days, the PHP agrees not to bill the beneficiary or the beneficiary's family for any amounts disallowed by CHAMPUS;

(*7*) Certify that:

(*i*) It is and will remain in compliance with the provisions of paragraph (b)(4)(xii) of this section establishing standards for psychiatric partial hospitalization programs;

(*ii*) It has conducted a self assessment of the facility's compliance with the CHAMPUS Standards for Psychiatric Partial Hospitalization Programs, as issued by the Director, OCHAMPUS, and notified the Director, OCHAMPUS of any matter regarding which the facility is not in compliance with such standards; and

(*iii*) It will maintain compliance with the CHAMPUS Standards for Psychiatric Partial Hospitalization Programs, as issued by the Director, OCHAMPUS, except for any such standards regarding which the facility notifies the Director, OCHAMPUS that it is not in compliance.

(*8*) Designate an individual who will act as liaison for CHAMPUS inquiries. The PHP shall inform OCHAMPUS in writing of the designated individual;

(*9*) Furnish OCHAMPUS with cost data, as requested by OCHAMPUS, certified by an independent accounting firm or other agency as authorized by the Director, OCHAMPUS;

(*10*) Comply with all requirements of this section applicable to institutional providers generally concerning preauthorization, concurrent care review, claims processing, beneficiary liability, double coverage, utilization and quality review and other matters;

(*11*) Grant the Director, OCHAMPUS, or designee, the right to conduct quality assurance audits or accounting audits with full access to patients and records (including records relating to patients who are not CHAMPUS beneficiaries) to determine the quality and cost-effectiveness of care rendered. The audits may be conducted on a scheduled or unscheduled (unannounced) basis. This right to audit/review includes, but is not limited to:

(*i*) Examination of fiscal and all other records of the PHP which would confirm compliance with the participation agreement and designation as an authorized CHAMPUS PHP provider;

(*ii*) Conducting such audits of PHP records including clinical, financial, and census records, as may be necessary to determine the nature of the services being provided, and the basis for charges and claims against the United States for services provided CHAMPUS beneficiaries;

(*iii*) Examining reports of evaluations and inspections conducted by federal, state and local government, and private agencies and organizations;

(*iv*) Conducting on-site inspections of the facilities of the PHP and interreviewing employees, members of the staff, contractors, board members, volunteers, and patients, as required;

(*v*) Audits conducted by the United States General Account Office.

(F) *Other requirements applicable to PHPs.*

(*1*) Even though a PHP may qualify as a CHAMPUS-authorized provider and may have entered into a participation agreement with CHAMPUS, payment by CHAMPUS for particular services provided is contingent upon the PHP also meeting all conditions set forth in section 199.4 of this part.

(*2*) The PHP shall provide patient services to CHAMPUS beneficiaries in the same manner it provides inpatient services to all other patients. The PHP may not discriminate against CHAMPUS beneficiaries in any manner, including admission practices, placement in special or separate wings or rooms, or provisions of special or limited treatment.

(*3*) The PHP shall assure that all certifications and information provided to the Director, OCHAMPUS incident to the process of obtaining and retaining authorized provider status is accurate and that is has no material errors or omissions. In the case of any misrepresentations, whether by inaccurate information being provided or material facts withheld, authorized provider status will be denied or terminated, and the PHP will be ineligible for consideration for authorized provider status for a two year period.

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(xiv) *Substance use disorder rehabilitation facilities.* Paragraph (b)(4)(xiv) of this section establishes standards and requirements for substance use order rehabilitation facilities (SUDRF). This includes both inpatient rehabilitation centers for the treatment of substance use disorders and partial hospitalization centers for the treatment of substance use disorders.

(A) *Organization and administration.*

(*1*) *Definition of inpatient rehabilitation center.* An inpatient rehabilitation center is a facility, or distinct part of a facility, that provides medically monitored, interdisciplinary addiction-focused treatment to beneficiaries who have psychoactive substance use disorders. Qualified health care professionals provide 24-hour, seven-day-per-week, medically monitored assessment, treatment, and evaluation. An inpatient rehabilitation center is appropriate for patients whose addiction-related symptoms, or concomitant physical and emotional/behavioral problems reflect persistent dysfunction in several major life areas. Inpatient rehabilitation is differentiated from:

(*i*) Acute psychoactive substance use treatment and from treatment of acute biomedical/emotional/behavioral problems; which problems are either life-threatening and/or severely incapacitating and often occur within the context of a discrete episode of addiction-related biomedical or psychiatric dysfunction;

(*ii*) A partial hospitalization center, which serves patients who exhibit emotional/behavioral dysfunction but who can function in the community for defined periods of time with support in one or more of the major life areas;

(*iii*) A group home, sober-living environment, halfway house, or three-quarter way house;

(*iv*) Therapeutic schools, which are educational programs supplemented by addiction-focused services;

(*v*) Facilities that treat patients with primary psychiatric diagnoses other than psychoactive substance use or dependence; and

(*vi*) Facilities that care for patients with the primary diagnosis of mental retardation or developmental disability.

(*2*) *Definition of partial hospitalization center for the treatment of substance use disorders.* A partial hospitalization center for the treatment of substance use disorders is an addiction-focused service that provides active treatment to adolescents between the ages of 13 and 18 or adults aged 18 and over. Partial hospitalization is a generic term for day, evening, or weekend programs that treat patients with psychoactive substance use disorders according to a comprehensive, individualized, integrated schedule of care. A partial hospitalization center is organized, interdisciplinary, and medically monitored. Partial hospitalization is appropriate for those whose addiction-related symptoms or concomitant physical and emotional/behavioral problems can be managed outside the hospital environment for defined periods of time with support in one or more of the major life areas.

(*3*) *Eligibility*.

(*i*) Every inpatient rehabilitation center and partial hospitalization center for the treatment of substance use disorders must be certified pursuant to CHAMPUS certification standards. Such standards shall incorporate the basic standards set forth in paragraphs (b)(4)(xiv) (A) through (D) of this section, and shall include such additional elaborative criteria and standards as the Director, OCHAMPUS determines are necessary to implement the basic standards.

(*ii*) To be eligible for CHAMPUS certification, the SUDRF is required to be licensed and fully operational (with a minimum patient census of the lesser of: six patients or 30 percent of bed capacity) for a period of at least six months and operate in substantial compliance with state and federal regulations.

(*iii*) The SUDRF is currently accredited by the Joint Commission on Accreditation of Healthcare Organizations under the Accreditation Manual for Mental Health, Chemical Dependency, and Mental Retardation/Developmental Disabilities Services, or by the Commission on Accreditation of Rehabilitation Facilities as an alcoholism and other drug dependency rehabilitation program under the Standards Manual for Organizations Serving People with Disabilities, or other designated standards approved by the Director, OCHAMPUS.

(*iv*) The SUDRF has a written participation agreement with OCHAMPUS. On October 1, 1995, the SUDRF is not considered a CHAMPUS-authorized provider, and CHAMPUS benefits are not paid for services provided until the date upon which a participation agreement is signed by the Director, OCHAMPUS.

(*4*) *Governing body*.

(*i*) The SUDRF shall have a governing body which is responsible for the policies, bylaws, and activities of the facility. If the SUDRF is owned by a partnership or single owner, the partners or single owner are regarded as the governing body. The facility will provide an up-to-date list of names, addresses, telephone numbers and titles of the members of the governing body.

(*ii*) The governing body ensures appropriate and adequate services for all patients and oversees continuing development and improvement of care. Where business relationships exist between the governing body and facility, appropriate conflict-of-interest policies are in place.

(*iii*) Board members are fully informed about facility services and the governing body conducts annual reviews of its performance in meeting purposes, responsibilities, goals and objectives.

(*5*) *Chief executive officer*. The chief executive officer, appointed by and subject to the direction of the governing body, shall assume overall administrative responsibility for the operation of the facility according to governing body policies. The chief executive officer shall have five years' administrative experience in the field of mental health or addictions. On October 1, 1997 the CEO shall possess a degree in business administration, public health, hospital administration, nursing, social work, or psychology, or meet similar educational requirements as prescribed by the Director, OCHAMPUS.

(*6*) *Clinical Director*. The clinical director, appointed by the governing body, shall be a qualified psychiatrist or doctoral level psychologist who meets applicable CHAMPUS requirements for individual professional providers and is licensed to practice in the state where the SUDRF is located. The clinical director shall possess requisite education and experience, including credentials applicable under state practice and licensing laws appropriate to the professional discipline. The clinical director shall satisfy at least one of the following requirements: certification by the American Society of Addiction Medicine; one year or 1,000 hours of experience in the treatment of psychoactive substance use disorders; or is a psychiatrist or doctoral level psychologist with experience in the treatment of substance use disorders. The clinical director shall be responsible for planning, development, implementation, and monitoring of all clinical activities.

(*7*) *Medical director*. The medical director, appointed by the governing body, shall be licensed to practice medicine in the state where the center is located and shall possess requisite education including graduation from an accredited school of medicine or osteopathy. The medical director shall satisfy at least one of the following requirements: certification by the American Society of Addiction Medicine; one year or 1,000 hours of experience in the treatment of psychoactive substance use disorders; or is a psychiatrist with experience in the treatment of substance use disorders. The medical director shall be responsible for the planning, development, implementation, and monitoring of all activities relating to medical treatment of patients. If qualified, the Medical Director may also serve as Clinical Director.

(*8*) *Medical or professional staff organization*. The governing body shall establish a medical or professional staff organization to assure effective implementation of clinical privileging, professional conduct rules, and other activities directly affecting patient care.

(*9*) *Personnel policies and records*. The SUDRF shall maintain written personnel policies, updated job descriptions, personnel records to assure the selection of qualified personnel and successful job performance of those personnel.

(*10*) *Staff development*. The SUDRF shall provide appropriate training and development programs for administrative, support, and direct care staff.

(*11*) *Fiscal accountability*. The SUDRF shall assure fiscal accountability to applicable government authorities and patients.

(*12*) *Designated teaching facilities*. Students, residents, interns, or fellows providing direct clinical care are under the supervision of a qualified staff member approved by an accredited university or approved training program. The teaching program is approved by the Director, OCHAMPUS.

(*13*) *Emergency reports and records*. The facility notifies OCHAMPUS of any serious occurrence involving CHAMPUS beneficiaries.

(B) *Treatment services*.

(*1*) *Staff composition*.

(*i*) The SUDRF shall follow written plans which assure that medical and clinical patient needs will be appropriately addressed during all hours of operation by a sufficient number of fully qualified (including license, registration or certification requirements, educational attainment, and professional experience) health care professionals and support staff in the respective disciplines. Clinicians providing individual, group and family therapy meet CHAMPUS requirements as qualified mental health providers and operate within the scope of their licenses. The ultimate authority for planning, development, implementation, and monitoring of all clinical activities is vested in a psychiatrist or doctoral level clinical psychologist. The management of medical care is vested in a physician.

(*ii*) The SUDRF shall establish and follow written plans to assure adequate staff coverage during all hours of operation of the center, including physician availability and other professional staff coverage 24 hours per day, seven days per week for an inpatient rehabilitation center and during all hours of operation for a partial hospitalization center.

(*2*) *Staff qualifications.* Within the scope of its programs and services, the SUDRF has a sufficient number of professional, administrative, and support staff to address the medical and clinical needs of patients and to coordinate the services provided. SUDRFs that employ individuals with master's or doctoral level degrees in a mental health discipline who do not meet the licensure, certification and experience requirements for a qualified mental health provider but are actively working toward licensure or certification, may provide services within the DRG, provided the individual works under the clinical supervision of a fully qualified mental health provider employed by the SUDRF.

(*3*) *Patient rights.*

(*i*) The SUDRF shall provide adequate protection for all patient rights, safety, confidentiality, informed consent, grievances, and personal dignity.

(*ii*) The SUDRF has a written policy regarding patient abuse and neglect.

(*iii*) SUDRF marketing and advertising meets professional standards.

(*4*) *Behavioral management.* When a SUDRF uses a behavioral management program, the center shall adhere to a comprehensive, written plan of behavioral management, developed by the clinical director and the medical or professional staff and approved by the governing body. It shall be based on positive reinforcement methods and, except for infrequent use of temporary physical holds or time outs, does not include the use of restraint or seclusion. Only trained and clinically privileged RNs or qualified mental health professionals may be responsible for the implementation of seclusion and restraint in an emergency situation.

(*5*) *Admission process.* The SUDRF shall maintain written policies and procedures to ensure that, prior to an admission, a determination is made, and approved pursuant to CHAMPUS preauthorization requirements, that the admission is medically and/or psychologically necessary and the program is appropriate to meet the patient's needs. Medical and/or psychological necessity determinations shall be rendered by qualified mental health professionals who meet CHAMPUS requirements for individual professional providers and who are permitted by law and by the facility to refer patients for admission.

(*6*) *Assessment.* The professional staff of the SUDRF shall provide a complete, multidisciplinary assessment of each patient which includes, but is not limited to, medical history, physical health, nursing needs, alcohol and drug history, emotional and behavioral factors, age-appropriate social circumstances, psychological condition, education status, and skills. Unless otherwise specified, all required clinical assessments are completed prior to development of the multidisciplinary treatment plan.

(*7*) *Clinical formulation.* A qualified mental health care professional of the SUDRF will complete a clinical formulation on all patients. The clinical formulation will be reviewed and approved by the responsible individual professional provider and will incorporate significant findings from each of the multidisciplinary assessments. It will provide the basis for development of an interdisciplinary treatment plan.

(*8*) *Treatment planning.* A qualified health care professional with admitting privileges shall be responsible for the development, supervision, implementation, and assessment of a written, individualized, and interdisciplinary plan of treatment, which shall be completed within 10 days of admission to an inpatient rehabilitation center or by the fifth day following admission to full day partial hospitalization center, and by the seventh day of treatment for half day partial hospitalization. The treatment plan shall include individual, measurable, and observable goals for incremental progress towards the treatment plan objectives and goals and discharge. A preliminary treatment plan is completed within 24 hours of admission and includes at least a physician's admission note and orders. The master treatment plan is regularly reviewed for effectiveness and revised when major changes occur in treatment.

(*9*) *Discharge and transition planning.* The SUDRF shall maintain a transition planning process to address adequately the anticipated needs of the patient prior to the time of discharge.

(*10*) *Clinical documentation.* Clinical records shall be maintained on each patient to plan care and treatment and provide ongoing evaluation of the patient's progress. All care is documented and each clinical record contains at least the following: demographic data, consent forms, pertinent legal documents, all treatment plans and patient assessments, consultation and laboratory reports, physician orders, progress notes, and a discharge summary. All documentation will adhere to applicable provisions of the JCAHO and requirements set forth in § 199.7(b)(3). An appropriately qualified records administrator or technician will supervise and maintain the quality of the records. These requirements are in addition to other records requirements of this Part, and provisions of the JCAHO Manual for Mental Health, Chemical Dependency, and Mental Retardation/Developmental Disabilities Services.

(*11*) *Progress notes.* Timely and complete progress notes shall be maintained to document the course of treatment for the patient and family.

(*12*) *Therapeutic services.*

(*i*) Individual, group, and family psychotherapy and addiction counseling services are provided to all patients, consistent with each patient's treatment plan by qualified mental health providers.

(*ii*) A range of therapeutic activities, directed and staffed by qualified personnel, are offered to help patients meet the goals of the treatment plan.

(*iii*) Therapeutic educational services are provided or arranged that are appropriate to the patient's educational and therapeutic needs.

(*13*) *Ancillary services.* A full range of ancillary services is provided. Emergency services include policies and procedures for handling emergencies with qualified personnel and written agreements with each facility providing the service. Other ancillary services include physical health, pharmacy and dietary services.

(C) *Standards for physical plant and environment.*

(*1*) *Physical environment.* The buildings and grounds of the SUDRF shall be maintained so as to avoid health and safety hazards, be supportive of the services provided to patients, and promote patient comfort, dignity, privacy, personal hygiene, and personal safety.

(*2*) *Physical plant safety.* The SUDRF shall be maintained in a manner that protects the lives and ensures the physical safety of patients, staff, and visitors, including conformity with all applicable building, fire, health, and safety codes.

(*3*) *Disaster planning.* The SUDRF shall maintain and rehearse written plans for taking care of casualties and handling other consequences arising from internal or external disasters.

(D) *Standards for evaluation system.*

(*1*) *Quality assessment and improvement.* The SUDRF develop and implement a comprehensive quality assurance and quality improvement program that monitors the quality, efficiency, appropriateness, and effectiveness of the care, treatments, and services it provides for patients and their families, utilizing clinical indicators of effectiveness to contribute to an ongoing process of program improvement. The clinical director is

responsible for developing and implementing quality assessment and improvement activities throughout the facility.

(*2*) *Utilization review.* The SUDRF shall implement a utilization review process, pursuant to a written plan approved by the professional staff, the administration, and the governing body, that assesses the appropriateness of admissions, continued stay, and timeliness of discharge as part of an effort to provide quality patient care in a cost-effective manner. Findings of the utilization review process are used as a basis for revising the plan of operation, including a review of staff qualifications and staff composition.

(*3*) *Patient records review.* The center shall implement a process, including monthly reviews of a representative sample of patient records, to determine the completeness and accuracy of the patient records and the timeliness and pertinence of record entries, particularly with regard to regular recording of progress/non-progress in treatment plan.

(*4*) *Drug utilization review.* An inpatient rehabilitation center and, when applicable, a partial hospitalization center, shall implement a comprehensive process for the monitoring and evaluating of the prophylactic, therapeutic, and empiric use of drugs to assure that medications are provided appropriately, safely, and effectively.

(*5*) *Risk management.* The SUDRF shall implement a comprehensive risk management program, fully coordinated with other aspects of the quality assurance and quality improvement program, to prevent and control risks to patients and staff and costs associated with clinical aspects of patient care and safety.

(*6*) *Infection control.* The SUDRF shall implement a comprehensive system for the surveillance, prevention, control, and reporting of infections acquired or brought into the facility.

(*7*) *Safety.* The SUDRF shall implement an effective program to assure a safe environment for patients, staff, and visitors.

(*8*) *Facility evaluation.* The SUDRF annually evaluates accomplishment of the goals and objectives of each clinical program and service of the SUDRF and reports findings and recommendations to the governing body.

(*E*) *Participation agreement requirements.* In addition to other requirements set forth in paragraph (b)(4)(xiv) of this section, in order for the services of an inpatient rehabilitation center or partial hospitalization center for the treatment of substance abuse disorders to be authorized, the center shall have entered into a Participation Agreement with OCHAMPUS. The period of a Participation Agreement shall be specified in the agreement, and will generally be for not more than five years. On October 1, 1995, the SUDRF shall not be considered to be a CHAMPUS authorized provider and CHAMPUS payments shall not be made for services provided by the SUDRF until the date the participation agreement is signed by the Director, OCHAMPUS. In addition to review of the SUDRFS application and supporting documentation, an on-site visit by OCHAMPUS representatives may be part of the authorization process. In addition, such a Participation Agreement may not be signed until an SUDRF has been licensed and operational for at least six months. The Participation Agreement shall include at least the following requirements:

(*1*) Render applicable services to eligible CHAMPUS beneficiaries in need of such services, in accordance with the participation agreement and CHAMPUS regulation;

(*2*) Accept payment for its services based upon the methodology provided in § 199.14, or such other method as determined by the Director, OCHAMPUS;

(*3*) Accept the CHAMPUS-determined rate as payment in full and collect from the CHAMPUS beneficiary or the family of the CHAMPUS beneficiary only those amounts that represent the beneficiary's liability, as defined in § 199.4, and charges for services and supplies that are not a benefit of CHAMPUS;

(*4*) Make all reasonable efforts acceptable to the Director, OCHAMPUS, to collect those amounts which represent the beneficiary's liability, as defined in § 199.4;

(*5*) Comply with the provisions of § 199.8, and submit claims first to all health insurance coverage to which the beneficiary is entitled that is primary to CHAMPUS;

(*6*) Furnish OCHAMPUS with cost data, as requested by OCHAMPUS, certified to by an independent accounting firm or other agency as authorized by the Director, OCHAMPUS;

(*7*) Certify that:

(*i*) It is and will remain in compliance with the provisions of paragraph (b)(4)(xiv) of the section establishing standards for substance use disorder rehabilitation facilities;

(*ii*) It has conducted a self assessment of the SUDRF'S compliance with the CHAMPUS Standards for Substance Use Disorder Rehabilitation Facilities, as issued by the Director, OCHAMPUS, and notified the Director, OCHAMPUS of any matter regarding which the facility is not in compliance with such standards; and

(*iii*) It will maintain compliance with the CHAMPUS Standards for Substance Use Disorder Rehabilitation Facilities, as issued by the Director, OCHAMPUS, except for any such standards regarding which the facility notifies the Director, OCHAMPUS that it is not in compliance.

(*8*) Grant the Director, OCHAMPUS, or designee, the right to conduct quality assurance audits or accounting audits with full access to patients and records (including records relating to patients who are not CHAMPUS beneficiaries) to determine the quality and cost effectiveness of care rendered. The audits may be conducted on a scheduled or unscheduled (unannounced) basis. This right to audit/review included, but is not limited to:

(*i*) Examination of fiscal and all other records of the center which would confirm compliance with the participation agreement and designation as an authorized CHAMPUS provider;

(*ii*) Conducting such audits of center records including clinical, financial, and census records, as may be necessary to determine the nature of the services being provided, and the basis for charges and claims against the United States for services provided CHAMPUS beneficiaries;

(*iii*) Examining reports of evaluations and inspection conducted by federal, state and local government, and private agencies and organizations;

(*iv*) Conducting on-site inspections of the facilities of the SUDRF and interviewing employees, members of the staff, contractors, board members, volunteers, and patients, as required.

(*v*) Audits conducted by the United States General Accounting Office.

(F) *Other requirements applicable to substance use disorder rehabilitation facilities.*

(*1*) Even though a SUDRF may qualify as a CHAMPUS-authorized provider and may have entered into a participation agreement with CHAMPUS, payment by CHAMPUS for particular services provided is contingent upon the SUDRF also meeting all conditions set forth in § 199.4.

(*2*) The center shall provide inpatient services to CHAMPUS beneficiaries in the same manner it provides services to all other patients. The center may not discriminate against CHAMPUS beneficiaries in any manner, including admission practices, placement in special or separate wings or rooms, or

provisions of special or limited treatment.

(*3*) The substance use disorder facility shall assure that all certifications and information provided to the Director, OCHAMPUS incident to the process of obtaining and retaining authorized provider status is accurate and that it has no material errors or omissions. In the case of any misrepresentations, whether by inaccurate information being provided or material facts withheld, authorized provider status will be denied or terminated, and the facility will be ineligible for consideration for authorized provider status for a two year period.

* * * * *

4. Section 199.14 is amended by designating the current text of paragraph (a)(2)(ii)(A) as paragraph (a)(2)(ii)(A)(*1*), revising paragraphs (a)(2)(ii)(B) and (a)(2)(iv)(C), the heading of paragraph (a)(2)(ix), paragraphs (a)(2)(ix)(A), (a)(2)(ix)(C), (f)(3), and (f)(5), and by adding new paragraphs (a)(1)(ii)(F), (a)(2)(ii)(A)(*2*), and (f)(6) as follows:

§ 199.14 Provider reimbursement methods.

(a) *Hospitals.* * * *

(1) *CHAMPUS Diagnosis Related Group (DRG)-based payment system.* * * *

(ii) *Applicability of the DRG system.* * * *

(F) *Substance Use Disorder Rehabilitation facilities.*

With admissions on or after July 1, 1995, substance use disorder rehabilitation facilities, authorized under § 199.6(b)(4)(xiv), are subject to the DRG-based payment system.

* * * * *

(2) *CHAMPUS mental health per diem payment system.*

* * * * *

(ii) *Hospital-specific per diems for higher volume hospitals and units.* * * *

(A) *Per diem amount.* * * *

(*2*) In states that have implemented a payment system in connection with which hospitals in that state have been exempted from the CHAMPUS DRG-based payment system pursuant to paragraph (a)(1)(ii)(A) of this section, psychiatric hospitals and units may have per diem amounts established based on the payment system applicable to such hospitals and units in the state. The per diem amount, however, may not exceed the cap amount applicable to other higher volume hospitals.

(B) *Cap.*

(*1*) As it affects payment for care provided to patients prior to April 6, 1995, the base period per diem amount may not exceed the 80th percentile of the average daily charge weighted for all discharges throughout the United States from all higher volume hospitals.

(*2*) Applicable to payments for care provided to patients on or after April 6, 1996, the base period per diem amount may not exceed the 70th percentile of the average daily charge weighted for all discharges throughout the United States from all higher volume hospitals. For this purpose, base year charges shall be deemed to be charges during the period of July 1, 1991 to June 30, 1992, adjusted to correspond to base year (FY 1988) charges by the percentage change in average daily charges for all higher volume hospitals and units between the period of July 1, 1991 to June 30, 1992 and the base year.

* * * * *

(iv) *Base period and update factors.*

* * * * *

(C) *Update factors.*

(*1*) The hospital-specific per diems and the regional per diems calculated for the base period pursuant to paragraphs (a)(2)(ii) of this section shall remain in effect for federal fiscal year 1989; there will be no additional update for fiscal year 1989.

(*2*) Except as provided in paragraph (a)(2)(iv)(C)(*3*) of this section, for subsequent federal fiscal years, each per diem shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare prospective payment system.

(*3*) As an exception to the update required by paragraph (a)(2)(iv)(C)(*2*) of this section, all per diems in effect at the end of fiscal year 1995 shall remain in effect, with no additional update, throughout fiscal years 1996 and 1997. For fiscal year 1998 and thereafter, the per diems in effect at the end of fiscal year 1997 will be updated in accordance with paragraph (a)(2)(iv)(C)(*2*).

(*4*) Hospitals and units with hospital-specific rates will be notified of their respective rates prior to the beginning of each Federal fiscal year. New hospitals shall be notified at such time as the hospital rate is determined. The actual amounts of each regional per diem that will apply in any Federal fiscal year shall be published in the Federal Register at approximately the start of that fiscal year.

* * * * *

(ix) *Per diem payment for psychiatric and substance use disorder rehabilitation partial hospitalization services.*

(A) *In general.* Psychiatric and substance use disorder rehabilitation partial hospitalization services authorized by § 199.4 (b)(10) and (e)(4) and provided by institutional providers authorized under § 199.6 (b)(4)(xii) and (b)(4)(xiv), are reimbursed on the basis of prospectively determined, all-inclusive per diem rates. The per diem payment amount must be accepted as payment in full for all institutional services provided, including board, routine nursing services, ancillary services (includes art, music, dance, occupational and other such therapies), psychological testing and assessments, overhead and any other services for which the customary practice among similar providers is included as part of the institutional charges.

* * * * *

(C) *Per diem rate.* For any full day partial hospitalization program (minimum of 6 hours), the maximum per diem payment amount is 40 percent of the average inpatient per diem amount per case established under the CHAMPUS mental health per diem reimbursement system for both high and low volume psychiatric hospitals and units (as defined in § 199.14(a)(2)) for the fiscal year. A partial hospitalization program of less than 6 hours (with a minimum of three hours) will be paid a per diem rate of 75 percent of the rate for a full-day program.

* * * * *

(f) *Reimbursement of Residential Treatment Centers.*

* * * * *

(3) For care on or after April 6, 1995, the per diem amount may not exceed a cap of the 70th percentile of all established Federal fiscal year 1994 RTC rates nationally, weighted by total CHAMPUS days provided at each rate during the first half of Federal fiscal year 1994, and updated to FY95. For Federal fiscal years 1996 and 1997, the cap shall remain unchanged. For Federal fiscal years after fiscal year 1997, the cap shall be adjusted by the Medicare update factor for hospitals and units exempt from the Medicare prospective payment system.

* * * * *

(5) Subject to the applicable RTC cap, adjustments to the RTC rates may be made annually.

(i) For Federal fiscal years through 1995, the adjustment shall be based on the Consumer Price Index-Urban (CPI–U) for medical care as determined applicable by the Director, OCHAMPUS.

(ii) For purposes of rates for Federal fiscal years 1996 and 1997:

(A) for any RTC whose 1995 rate was at or above the thirtieth percentile of all established Federal fiscal year 1995 RTC rates normally, weighted by total CHAMPUS days provided at each rate during the first half of Federal fiscal

year 1994, that rate shall remain in effect, with no additional update, throughout fiscal years 1996 and 1997; and

(B) For any RTC whose 1995 rate was below the 30th percentile level determined under paragraph (f)(5)(ii)(A) of this section, the rate shall be adjusted by the lesser of: the CPI–U for medical care, or the amount that brings the rate up to that 30th percentile level.

(iii) For subsequent Federal fiscal years after fiscal year 1997, RTC rates shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare prospective payment system.

(6) For care provided on or after July 1, 1995, CHAMPUS will not pay for days in which the patient is absent on leave from the RTC. The RTC must identify these days when claiming reimbursement.

Dated: March 1, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–5375 Filed 3–6–95; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–17–1–5600a; FRL–5163–3]

Approval and Promulgation of Implementation Plans; Texas State Implementation Plan Revision; Corrections for Reasonably Available Control Technology (RACT) Rules; Volatile Organic Compounds (VOC) RACT Catch-Ups

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas on June 8, 1992, and additional revisions which were submitted on November 13, 1992. These SIP revisions contain regulations which require the implementation of RACT for various types of VOC sources. These revisions respond to the requirements of section 182(b)(2) of the Federal Clean Air Act, as amended in 1990 (CAA), for States to adopt RACT rules by November 15, 1992, for major VOC sources which are not covered by an existing EPA Control Techniques Guideline (CTG) and for all sources covered by an existing CTG. These revisions also include corrections to the monitoring, recordkeeping, and reporting requirements for Victoria County, in order to make the VOC rules more enforceable in that County.

DATES: This final rule is effective on May 8, 1995, unless critical or adverse comments are received by April 6, 1995. If the effective date is delayed, timely notice will be published in the Federal Register (FR).

ADDRESSES: Comments should be mailed to Guy R. Donaldson, Acting Chief, Air Planning Section (6T–AP), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State's submittals and other information relevant to this action are available for inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street S.W, Washington, DC 20460.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

Anyone wishing to review these documents at the U.S. EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Mick Cote, Planning Section (6T–AP), Air Programs Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 655–7219.

SUPPLEMENTARY INFORMATION:

Background

Section 182(b)(2) of the CAA, as amended in 1990, requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment of the CAAA of 1990; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG. This action does not address requirements to implement RACT at sources covered by post-enactment CTG's. Texas has identified sources in these post-enactment CTG source categories. RACT requirements will be addressed for these sources in future actions.

Section 182(b)(2) calls for nonattainment areas that previously were exempt from certain VOC RACT requirements to ''catch up'' to those nonattainment areas that became subject to those requirements under the preamended Act. In addition, it requires newly designated ozone nonattainment areas to adopt RACT rules consistent with those for previously designated nonattainment areas. In addition, the major source threshold is lowered for certain nonattainment areas (50 tons/yr for serious areas and 25 tons/yr in severe areas). States are required to ensure that RACT is implemented based on these new major source definitions. In Texas, there are four ozone nonattainment areas: Dallas/Fort Worth (moderate), Beaumont/Port Arthur (serious), El Paso (serious) and Houston (severe). These VOC RACT revisions pending before EPA expand the applicability of control requirements to include the newly-designated perimeter counties (Chambers, Collin, Denton, Fort Bend, Hardin, Liberty, Montgomery, and Waller). In addition, the applicability of control requirements has been expanded to include all previously-designated ozone nonattainment counties (Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Orange, and Tarrant). The existing requirements for Gregg, Nueces, and Victoria Counties have been relocated to a separate (new) subsection in each applicable section. Non-CTG RACT rules for mirror backing coating facilities have been added. Finally, monitoring/recordkeeping requirements for VOC sources in Victoria County were revised to be made more enforceable.

Procedural Background

The Clean Air Act (the Act) requires states to observe certain procedural requirements in developing implementation plans for submission to the EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a state must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a state under the Act must be adopted by such state after reasonable notice and public hearing. The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 Code of Federal Regulations (CFR) part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of

receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

The State of Texas held a public hearing on February 24, 1992, to entertain public comment on the June 8, 1992 SIP submittal. The State held a public hearing on July 27, 1992, to entertain public comment on the November 13, 1992 SIP revision. Subsequent to the public hearings and consideration of hearing comments, the June 8, 1992 SIP revision was adopted by the State on May 8, 1992. The November 13, 1992 SIP revision was adopted by the State on October 16, 1992.

These SIP revisions were reviewed by the EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. A letter dated July 20, 1992, was forwarded to the Governor finding the submittal complete and indicating the next steps to be taken in the review process. The November 16, 1992 submittal was ruled complete on January 15, 1993.

EPA Evaluation

In determining the approvability of a VOC rule, the EPA must evaluate the rule for consistency with the requirements of the CAA and the EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in various EPA policy guidance documents.

To evaluate these rules, the EPA used the CTGs and ''Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations'', dated May 25, 1988. The technical review of these rule revisions is included in the RACT ''Catch-up'' Technical Support Document (TSD). Please refer to this document for an explanation of the specific revisions. The following rules have been submitted. For a detailed description of the rule changes, see the TSD.

Revisions to the General Rules and Regulation V, Submitted June 8, 1992

Section 101.1 of the General Rules (Definitions), and the following sections of regulation V: 115.010 (Definitions), 115.112–115.119 (Storage of Volatile Organic Compounds), 115.121–115.129 (Vent Gas Control), 115.131–115.139 (Water Separation), 115.211–115.219 (Loading/Unloading of VOCs), 115.221–115.229 (Stage I), 115.234–115.239 (VOC Leaks from Gasoline Tank Trucks), 115.242–115.249 (Gasoline Reid Vapor Pressure), 115.311–115.319 (Process Unit Turnaround), 115.322–115.329 (Petroleum Refinery Fugitives), 115.332–115.339 (Synthetic Organic Chemical, Polymer, Resin, and Methyl Tert-Butyl Ether (MTBE) Manufacturing Fugitives), 115.342–115.349 (Natural Gas/Gasoline Processing Fugitives), 115.412–115.249 (Degreasing Operations), 115.421–115.429 (Surface Coating Processes), 115.432–115.439 (Graphic Arts), 115.512–115.519 (Cutback Asphalt), 115.531–115.539 (Pharmaceutical Manufacturing), and 115.612–115.619 (Consumer Solvent Products).

Revisions to the General Rules and Regulation V, Submitted November 13, 1992

Section 101.1 of the General Rules (Definitions), and the following sections of regulation V: 115.010 (Definitions), 115.116–115.119 (Storage of Volatile Organic Compounds), 115.126–115.219 (Vent Gas Control), 115.136–115.139 (Water Separation), 115.211–115.219 (Loading/Unloading of VOCs), 115.249 (Reid Vapor Pressure), 115.316–115.319 (Process Unit Turnaround), 115.421–115.429 (Surface Coating Processes), 115.436–115.439 (Graphic Arts), and 115.536–115.539 (Pharmaceutical Manufacturing).

These revisions accomplish the following requirements of section 182(b)(2):

1. Expand RACT requirements to the newly designated nonattainment counties;
2. Eliminate the distinction between ''rural'' and ''urban'' nonattainment areas, and;
3. Ensure that RACT is applied to all major sources in the ozone nonattainment areas.

The EPA has determined that the RACT revisions to the Texas General Rules and Regulation V meet the applicable Federal requirements.

Final Action

The EPA has evaluated the State's submittal for consistency with the CAA, EPA regulations, and EPA policy. The EPA has determined that the rules meet the CAA's requirements and today is approving under section 110(k)(3) the above mentioned VOC rules.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this FR publication, the EPA is proposing to approve these SIP revisions should adverse or critical comments be received. Thus, this action will be effective on May 8, 1995, unless adverse or critical comments are received by April 6, 1995.

If such comments are received, this action will be withdrawn before the effective date by publishing two subsequent documents. One document will withdraw the final action, and another final action will be published addressing any adverse comments. If no such adverse comments are received, the public is advised that this action will be effective on May 8, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economical, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, under 5 U.S.C. 605(b), the EPA may certify that the rule will not have a significant impact on a substantial number of small entities (see 46 FR 8709). Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over population of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2)).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of

judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

Executive Order

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Dated: February 22, 1995.

Jane N. Saginaw,

Regional Administrator (6A).

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c) (88) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(88) Revisions to the Texas State Implementation Plan, submitted to EPA on June 8 and November 13, 1992, respectively. These revisions adopt expansion of applicability for Reasonably Available Control Technology (RACT) rules for volatile organic compounds (VOCs) to ensure that all major VOC sources are covered by RACT, to revise the major source definition, and to revise certain monitoring, recordkeeping, and reporting requirements for Victoria County, Texas.

(i) Incorporation by reference.

(A) Texas Air Control Board Order No. 92–04, as adopted on May 8, 1992.

(B) Revisions to the General Rules, as adopted by the Board on May 8, 1992, section 101.1—New definitions for capture efficiency, capture system, carbon adsorber, carbon adsorption system, coating, coating line, control device, control system, pounds of volatile organic compounds (VOC) per gallon of coating (minus water and exempt solvents), pounds of volatile organic compounds (VOC) per gallon of solids, printing line; revised definitions for component, exempt solvent, leak, vapor recovery system, volatile organic compound (VOC).

(C) Revisions to Regulation V, as adopted by the Board on May 8, 1992, sections 115.010 (Definitions)—Beaumont/Port Arthur area, Dallas/Fort Worth area, El Paso area, Houston/Galveston area; revised definition for delivery vessel/tank truck tank; 115.112(a), 115.112(a)(3), 115.112(b)(1), 115.112(b)(2), 115.112(b)(2)(A) through 115.112(b)(2)(D), 115.112(b)(2)(E), 115.112(b)(2)(F), 115.112(c), 115.112(c)(3)(A), 115.112(c)(3)(B), 115.113(a) through 115.113(c), 115.114(a), 115.114(b), 115.114(b)(1), 115.114(b)(2), 115.115(a), 115.115(b), 115.115(b)(1) through 115.115(b)(8), 115.116(a), 115.116(a)(4), 115.116(b), 115.116(b)(1) through 115.116(b)(4), 115.117(a), 115.117(b), 115.117(b)(1) through 115.117(b)(6), 115.117(b)(6)(A) through 115.117(b)(6)(C), 115.117(b)(7), 115.117(b)(7)(A) through 115.117(b)(7)(C), 115.117(c), 115.117(c)(1) through 115.117(c)(4), 115.119 introductory paragraph, 115.121(a), 115.121(a)(1), 115.121(a)(1)(C), 115.121(a)(2), 115.121(a)(3), 115.121(b), 115.121(b)(1) through 115.121(b)(3), 115.121(c), 115.121(c)(1), 115.121(c)(2) through 115.121(c)(4), 115.122(a), 115.122(b), 115.122(c), 115.122(c)(1) through 115.122(c)(4), 115.123(a) through 115.123(c), 115.125(a), 115.125(a)(2), 115.125(b), 115.125(b)(1) through 115.125(b)(7), 115.126 introductory paragraph, 115.127(a), 115.127(a)(2), 115.127(a)(3), 115.127(a)(3)(B), 115.127(a)(3)(C), 115.127(a)(4), 115.127(a)(4)(C), 115.127(b), 115.127(b)(1), 115.127(b)(2), 115.127(b)(2)(A) through 115.127(b)(2)(B), 115.127(c), 115.127(c)(1), 115.127(c)(2), 115.127(c)(2)(A) through 115.127(c)(2)(C), 115.129 introductory paragraph, 115.129(1) through 115.129(3), 115.131(a), 115.131(a)(2) through 115.131(a)(4), 115.131(b) through 115.131(c), 115.132(a), 115.132(b), 115.132(b)(1) through 115.132(b)(3), 115.132(c), 115.132(c)(3), 115.133(a) through 115.133(c), 115.135(a), 115.135(b), 115.135(b)(1) through 115.135(b)(6), 115.136(a), 115.136(a)(1), 115.136(a)(2), 115.136(a)(2)(A) through 115.136(a)(2)(D), 115.136(a)(3), 115.136(a)(4), 115.136(b), 115.137(a), 115.137(a)(1) through 115.137(a)(4), 115.137(b), 115.137(b)(1) through 115.137(b)(4), 115.137(c), 115.137(c)(1) through 115.137(c)(3), 115.139 introductory paragraph, 115.139(1), 115.139(2), 115.211 introductory paragraph, 115.211(1)(A), 115.211(1)(B), 115.211(2), 115.212(a), 115.212(a)(4), 115.212(a)(5), 115.212(b), 115.212(b)(1), 115.212(b)(2), 115.212(b)(2)(A), 115.212(b)(2)(B), 115.212(b)(3), 115.212(b)(3)(A) through 115.212(b)(3)(C), 115.212(c), 115.212(c)(1), 115.213(a) through 115.213(c), 115.214(a), 115.214(a)(3), 115.214(a)(4), 115.214(b), 115.214(b)(1), 115.214(b)(2), 115.215(a), 115.215(b), 115.215(b)(1) through 115.215(b)(8), 115.216 introductory paragraph, 115.216(4), 115.217(a), 115.217(a)(2) through 115.217(a)(4), 115.217(b), 115.217(b)(1) through 115.217(b)(3), 115.217(c), 115.217(c)(3), 115.219 introductory paragraph, 115.219(1) through 115.219(6), 115.221 introductory paragraph, 115.222 introductory paragraph, 115.222(6), 115.223 introductory paragraph, 115.224 introductory paragraph, 115.224(2), 115.225 introductory paragraph, 115.226 introductory paragraph, 115.227 introductory paragraph, 115.229 introductory paragraph, 115.234 introductory paragraph, 115.235 introductory paragraph, 115.236 introductory paragraph, 115.239 introductory paragraph, 115.311(a), 115.311(a)(1), 115.311(a)(2), 115.311(b), 115.311(b)(1), 115.311(b)(2), 115.312(a), 115.312(a)(2), 115.312(b), 115.312(b)(1), 115.312(b)(1)(A), 115.312(b)(1)(B), 115.312(b)(2), 115.313(a) through 115.313(b), 115.315(a), 115.315(b), 115.315(b)(1) through 115.315(b)(7), 115.316 introductory paragraph, 115.316(1), 115.316(2), 115.316(3), 115.317 introductory paragraph, 115.319 introductory paragraph, 115.319(1), 115.319(2), 115.322(a), 115.322(b), 115.322(b)(1) through 115.322(b)(5), 115.323(a), 115.323(a)(2), 115.323(b), 115.323(b)(1), 115.323(b)(2), 115.324(a), 115.324(a)(4), 115.324(b), 115.324(b)(1), 115.324(b)(1)(A) through 115.324(b)(1)(D), 115.324(b)(2), 115.324(b)(2)(A) through 115.324(b)(2)(C), 115.324(b)(3) through 115.324(b)(8), 115.324(b)(8)(A), 115.324(b)(8)(A)(i), 115.324(b)(8)(A)(ii), 115.324(b)(8)(B), 115.325(a), 115.325(b), 115.325(b)(1) through 115.325(b)(3), 115.326(a), 115.326(a)(2), 115.326(b), 115.326(b)(1), 115.326(b)(2), 115.326(b)(2)(A) through 115.326(b)(2)(I), 115.326(b)(3), 115.326(b)(4), 115.327(a), 115.327(a)(2), 115.327(a)(4), 115.327(a)(5), 115.327(b), 115.327(b)(1), 115.327(b)(1)(A) through 115.327(b)(1)(C), 115.327(b)(2) through 115.327(b)(6), 115.329 introductory paragraph, 115.332 introductory paragraph, 115.333 introductory

paragraph, 115.334 introductory paragraph, 115.334(3), 115.334(3)(A), 115.335 introductory paragraph, 115.336 introductory paragraph, 115.337 introductory paragraph, 115.337(2) through 115.337(4), 115.337(4)(E), 115.339 introductory paragraph, 115.342 introductory paragraph, 115.343 introductory paragraph, 115.344 introductory paragraph, 115.345 introductory paragraph, 115.346 introductory paragraph, 115.347 introductory paragraph, 115.347(3), 115.349 introductory paragraph, 115.412(a), 115.412(a)(1)(F)(iv), 115.412(a)(3)(I), 115.412(a)(3)(I)(viii), 115.412(b), 115.412(b)(1), 115.412(b)(1)(A), 115.412(b)(1)(A)(i) through 115.412(b)(1)(A)(iii), 115.412(b)(1)(B) through 115.412(b)(1)(F), 115.412(b)(1)(F)(i) through 115.412(b)(1)(F)(iv), 115.412(b)(2), 115.412(b)(2)(A), 115.412(b)(2)(B), 115.412(b)(2)(B)(i) through 115.412(b)(2)(B)(iii), 115.412(b)(2)(C), 115.412(b)(2)(D), 115.412(b)(2)(D)(i) through 115.412(b)(2)(D)(iv), 115.412(b)(2)(E), 115.412(b)(2)(F), 115.412(b)(2)(F)(i) through 115.412(b)(2)(F)(xiii), 115.412(b)(3), 115.412(b)(3)(A), 115.412(b)(3)(A)(i), 115.412(b)(3)(A)(ii), 115.412(b)(3)(B) through 115.412(b)(3)(I), 115.412(b)(3)(I)(i) through 115.412(b)(3)(I)(viii), 115.413(a), 115.413(a)(1), 115.413(a)(2), 115.413(b), 115.413(b)(1), 115.413(b)(2), 115.415(a), 115.415(a)(1), 115.415(a)(2), 115.415(b), 115.415(b)(1), 115.415(b)(1)(A), 115.415(b)(1)(B), 115.415(b)(2), 115.415(b)(2)(A) through 115.415(b)(2)(E), 115.416(a), 115.416(b), 115.416(b)(1), 115.416(b)(2), 115.417(a), 115.417(a)(1) through 115.417(a)(6), 115.417(b), 115.417(b)(1) through 115.417(b)(6), 115.419(a) through 115.419(b), 115.421(a), 115.421(a)(8), 115.421(a)(8)(A), 115.421(a)(8)(B), 115.421(a)(8)(C), 115.421(a)(9), 115.421(a)(9)(v), 115.421(a)(11), 115.421(b), 115.421(b)(1) through 115.421(b)(9), 115.421(b)(9)(A), 115.421(b)(9)(A)(i) through 115.421(b)(9)(A)(iv), 115.421(b)(9)(B), 115.421(b)(9)(C), 115.421(b)(10), 115.422(a), 115.422(a)(1), 115.422(a)(2), 115.423(a), 115.423(a)(3), 115.423(a)(4), 115.423(b), 115.423(b)(1) through 115.423(b)(4), 115.424(a), 115.424(a)(1) through 115.424(a)(3), 115.424(a)(2), 115.424(b), 115.424(b)(1), 115.424(b)(2), 115.425(a), 115.425(a)(1), 115.425(a)(2), 115.425(a)(3), 115.425(a)(3)(B), 115.425(a)(4)(C)(ii), 115.425(b), 115.424(b)(1), 115.424(b)(1)(A) through 115.425(b)(1)(E), 115.425(b)(2), 115.424(b)(2)(A) through 115.425(b)(2)(E), 115.426(a), 115.426(a)(1), 115.426(a)(1)(C), 115.426(a)(2), 115.426(a)(2)(B), 115.426(a)(3), 115.426(a)(4), 115.426(b), 115.426(b)(1), 115.426(b)(1)(A) through 115.426(b)(1)(D), 115.426(b)(2), 115.426(b)(2)(A), 115.426(b)(2)(A)(i) through 115.426(b)(2)(A)(iv), 115.426(b)(2)(B), 115.426(b)(2)(C), 115.426(b)(3), 115.427(a), 115.427(a)(1), 115.427(a)(2), 115.427(a)(2)(A), 115.427(a)(2)(B), 115.427(a)(3), 115.427(a)(4), 115.427(a)(5), 115.427(a)(5)(A), 115.427(a)(5)(B), 115.426(a)(6), 115.427(b), 115.427(b)(1), 115.427(b)(2), 115.427(b)(2)(A) through 115.427(b)(2)(E), 115.427(b)(3), 115.427(b)(3)(A) through 115.427(b)(3)(C), 115.429(a) through 115.429(c), 115.432(a), 115.432(a)(2), 115.432(a)(3), 115.432(b), 115.432(b)(1) through 115.432(b)(3), 115.432(b)(3)(A) through 115.432(b)(3)(C), 115.433(a), 115.433(b), 115.435(a), 115.435(a)(6), 115.435(a)(7), 115.435(a)(7)(C)(ii), 115.435(a)(8), 115.435(b), 115.435(b)(1) through 115.435(b)(7), 115.436(a), 115.436(a)(1), 115.436(a)(2), 114.436(a)(4) through 115.436(a)(6), 115.436(b), 115.436(b)(1) through 115.436(b)(3), 115.436(b)(3)(A) through 115.436(b)(3)(C), 115.436(b)(4), 115.436(b)(5), 115.437(a), 115.437(a)(1) through 115.437(a)(4), 115.437(b), 115.439(a) through 115.439(c), 115.512 introductory paragraph, 115.512 (1) through 115.512(3), 115.513 introductory paragraph, 115.515 introductory paragraph, 115.516 introductory paragraph, 115.517 introductory paragraph, 115.519(a) through 115.519(b), 115.531(a), 115.531(a)(2), 115.531(a)(3), 115.531(b), 115.531(b)(1) through 115.531(b)(3), 115.532(a), 115.532(a)(4), 115.532(a)(5), 115.532(b), 115.532(b)(1)(A), 115.532(b)(1)(B), 115.532(b)(2), 115.532(b)(3), 115.532(b)(3)(A), 115.532(b)(3)(B), 115.532(b)(4), 115.533(a), 115.533(b), 115.534(a), 115.534(b), 115.534(b)(1), 115.534(b)(2), 115.535(a), 115.535(b), 115.535(b)(1) through 115.535(b)(6), 115.536(a), 115.536(a)(1), 115.536(a)(2), 115.536(a)(3), 115.536(a)(4), 115.536(b), 115.536(b)(1), 115.536(b)(2), 115.536(b)(2)(A), 115.536(b)(2)(A)(i) through 115.536(b)(2)(A)(iii), 115.536(b)(2)(B), 115.536(b)(3), 115.536(b)(3)(A), 115.536(b)(3)(B), 115.536(b)(4), 115.536(b)(5), 115.537(a), 115.537(a)(1) through 115.537(a)(7), 115.537(b), 115.537(b)(1) through 115.537(b)(5), 115.539(a), 115.539(b), 115.612 introductory paragraph, 115.613 introductory paragraph, 115.614 introductory paragraph, 115.615 introductory paragraph, 115.615(1), 115.617 introductory paragraph, 115.617(1), 115.619 introductory paragraph.

(D) Texas Air Control Board Order No. 92–16, as adopted on October 16, 1992.

(E) Revisions to the General Rules, as adopted by the Board on October 16, section 101.1: Introductory paragraph, new definition for extreme performance coating; revised definitions for gasoline bulk plant, paragraph vii of miscellaneous metal parts and products coating, mirror backing coating, volatile organic compound.

(F) Revisions to Regulation V, as adopted by the Board on October 16, 1992, sections 115.010—new definition for extreme performance coating; revised definitions for gasoline bulk plant, paragraph vii of miscellaneous metal parts and products coating, mirror backing coating, and volatile organic compound; 115.116 title (Monitoring and Recordkeeping Requirements), 115.116(a)(2), 115.116(a)(3), 115.116(a)(3)(A) through 115.116(a)(3)(C), 115.116(a)(5), 115.116(b)(2), 115.116(b)(3), 115.116(b)(3)(A) through 115.116(b)(3)(D), 115.116(b)(4), 115.116(b)(5), 115.119(a), 115.119(b), 115.126 title (Monitoring and Recordkeeping Requirements), 115.126(a), 115.126(a)(1)(A), 115.126(a)(1)(C), 115.126(a)(1)(E), 115.126(b), 115.126(b)(1), 115.126(b)(1)(A) through 115.126(b)(1)(E), 115.126(b)(2), 115.126(b)(2)(A) through 115.126(b)(2)(D), 115.126(b)(3), 115.126(b)(3)(A), 115.126(b)(3)(B), 115.127(a)(4)(A) through 115.127(a)(4)(C), 115.129(a), 115.129(a)(1), 115.129(b), 115.136 title (Monitoring and Recordkeeping Requirements), 115.136(a)(4), 115.136(b), 115.136(b)(1), 115.136(b)(2), 115.136(b)(2)(A) through 115.136(b)(2)(D), 115.136(b)(3), 115.136(b)(4), 115.139(a), 115.139(b), 115.211(a), 115.211(b), 115.215(a), 115.215(b), 115.216 title (Monitoring and Recordkeeping Requirements), 115.216(a), 115.216(a)(2)(A) through 115.216(a)(2)(C), 115.216(a)(5), 115.216(b), 115.216(b)(1), 115.216(b)(2), 115.216(b)(2)(A) through 115.216(b)(2)(D), 115.216(b)(3), 115.216(b)(3)(A), 115.216(b)(3)(B), 115.216(b)(4), 115.217(a)(6), 115.219(a)(1) through 115.219(a)(4), 115.219(b), 115.316 title (Monitoring and Recordkeeping Requirements), 115.316(a), 115.316(a)(1)(A), 115.316(a)(1)(C), 115.316(a)(4), 115.316(b), 115.316(b)(1), 115.316(b)(1)(A) through 115.316(b)(1)(D), 115.316(b)(2), 115.316(b)(2)(A) through

115.316(b)(2)(C), 115.316(b)(3), 115.316(b)(4), 115.319(a)(1), 115.319(a)(2), 115.319(b), 115.421(a), 115.421(a)(12), 115.421(a)(12)(A), 115.421(a)(12)(A)(i), 115.421(a)(12)(A)(ii), 115.421(a)(12)(B), 115.425(a)(4)(C)(ii), 115.426 title (Monitoring and Recordkeeping Requirements), 115.426(a)(2), 115.426(a)(2)(A)(i), 115.426(b)(2), 115.426(b)(2)(i), 115.427(a)(5)(C), 115.427(a)(6), 115.427(a)(6)(A) through 115.427(a)(6)(C), 115.427(a)(7), 115.429(d), 115.436 title (Monitoring and Recordkeeping Requirements), 115.436(a)(3), 115.436(a)(3)(C), 115.436(b), 115.436(b)(3), 115.436(b)(3)(B) through 115.436(b)(3)(D), 115.439(d), 115.536 title (Monitoring and Recordkeeping Requirements), 115.536(a)(1), 115.536(a)(2), 115.536(a)(2)(A), 115.536(a)(2)(A)(ii), 115.536(a)(5), 115.536(b)(1), 115.536(b)(2), 115.536(b)(2)(A), 115.536(b)(2)(A)(ii) through 115.536(b)(2)(A)(iv), 115.539(c).

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[FR Doc. 95–5344 Filed 3–6–95; 8:45 am]

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40 CFR Part 52

[TX–21–1–6634; FRL–5134–6]

Clean Air Act Approval and Promulgation of Title I, Section 182(d)(1)(B), Employee Commute Options/Employer Trip Reduction Program for Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, the EPA is approving the State Implementation Plan (SIP) revision submitted by the State of Texas for the purpose of establishing an Employee Commute Options (ECO) program (also known as the Employer Trip Reduction (ETR) program). Pursuant to Section 182(d)(1)(B) of the Clean Air Act (CAA), as amended in 1990, the SIP was submitted by Texas to satisfy the statutory mandate that an ETR Program be established for employers with 100 or more employees, such that compliance plans developed by such employers are designed to convincingly demonstrate an increase in the average passenger occupancy (APO) of their employees who commute to work during the peak period, by no less than 25 percent above the average vehicle occupancy (AVO) of the nonattainment area.

EFFECTIVE DATE: This action will be effective on April 6, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, Dallas, Texas 75202–2733.

The Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Hal D. Brown, Planning Section (6T–AP), Air Programs Branch, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7248.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the CAA will require employers with 100 or more employees in the Houston-Galveston ozone nonattainment area to participate in a trip reduction program. Section 182(d)(1)(B) requires that employers submit ETR compliance plans to the State two years after the SIP is submitted to the EPA. These compliance plans must ''convincingly demonstrate'' that within four years after the SIP is submitted, the employer will achieve an increase in the APO of its employees who commute to work during the peak period by not less than 25 percent above the AVO of the nonattainment area. Where there are important differences in terms of commute patterns, land use, or AVO, the States may establish different zones within the nonattainment area for purposes of calculation of the AVO.

For an approvable ETR SIP, the State submittal must contain each of the following program elements: (1) The AVO for each nonattainment area or for each zone if the area is divided into zones; (2) the target APO which is no less than 25 percent above the AVO(s); (3) an ETR program that includes a process for compliance demonstration; and, (4) enforcement procedures to ensure submission and implementation of compliance plans by subject employers. The EPA issued guidance on December 17, 1992, interpreting various aspects of the statutory requirements [Employee Commute Options Guidance, December 1992].

On November 13, 1992, the EPA received from the Governor of Texas a SIP revision to incorporate the ETR regulation which was adopted by the State on October 16, 1992. On October 18, 1993, the EPA proposed approval of the Texas ETR SIP in the Federal Register (FR) because it meets the requirements of section 182(d)(1)(B) of the CAA and the criteria listed above (see 58 FR 53693). The proposed rulemaking action provides a detailed discussion of the EPA's rationale for proposing approval of the State's ETR SIP, and should be referred to. The EPA requested public comments on all aspects of the proposal. A summary of the comments received and the EPA's response to them are provided below. A more detailed response to comments is available from the EPA Region 6 office.

II. Response to Comments

The EPA received three comment letters, one from the State of Texas which supported the EPA's action, one from a local citizen which raised concerns with the Texas program, and one from a local environmental group which objected to EPA's proposed approval.

Comment 1—The Texas Natural Resource Conservation Commission (TNRCC) supported the EPA's proposed approval of the Texas ETR SIP. In addition, the State pointed out a correction to our notice. On page 53695, part D under ''Enforcement Procedures,'' the EPA states that violators may be subject to up to $10,000 in administrative penalties and up to $25,000 in civil penalties. The State commented that this provision should instead read, ''may subject the violator up to $10,000 in administrative penalties or up to $25,000 in civil penalties per violation.''

EPA Response—The EPA agrees with the State's comment. Violators may be subject to either administrative or civil penalties for a given violation. The penalty provisions of the Texas program are approvable.

Comment 2—A local citizen and the environmental group commented that the emphasis of the ETR program should be on reducing work-related trips. In addition, the environmental group commented that it would be illegal to also emphasize reductions in vehicle miles travelled (VMT).

EPA Response—The EPA agrees that the intent of the section 182(d)(1)(B) of the CAA is to reduce work-related commute trips. We feel that Texas' program will accomplish this goal. The ETR regulation subjects employers to a

violation for not achieving the target APO. The SIP clearly provides for sufficient penalties to deter non-compliance. In addition to this ''penalty-based'' approach, the State regulation also requires employers to sufficiently plan to ensure that they meet their target APO. Employers are required to register with the State, submit ETR compliance plans, implement their plan, and monitor their progress towards meeting their target APO.

The EPA disagrees that it would be illegal to also emphasize reductions in VMT. Section 182(d)(1)(B) of the CAA states that States ''shall submit a revision requiring employers in such area to implement programs to reduce work-related vehicle trips and miles traveled by employees.'' It is clear that the intent of this provision is to accomplish a reduction in both trips and VMT associated with commuting. Therefore, we do not believe it would be illegal to incorporate reductions in VMT as part of the ETR program, as long as other provisions of section 182(d)(1)(B) are met. While Texas currently does not include VMT considerations in its ETR program, the EPA believes that the State is not precluded from subsequently revising its ETR rule to allow for VMT considerations.

Comment 3—One local citizen and the environmental group objected to ETR trading or banking.

EPA Response—The current State ETR regulation does not allow for ETR trading although the EPA's Employee Commute Options Guidance, issued in December 1992, does allow employers in the same nonattainment area to aggregate APO credits through averaging, banking and trading (see page 16 of that guidance). We understand that the State may consider establishing a trading program, which would require a subsequent SIP revision.

The current State ETR rule does allow companies to bank ETR credits for only one year. As explained in the EPA's ECO Guidance (see page 19), the EPA believes that in terms of public health benefits, early reductions achieved through banking of APO credits offset later application of banked credits because as the fleet turns over and cleaner fuels are employed, each vehicle trip generates less emissions. The TNRCC restricts the use of banked credits to one year. The EPA believes that the use of the banked APO credits complies with the intent of the statute and will not materially affect attainment by the required date of 2007.

Comment 4—The environmental group commented that the term ''regular basis'' must be defined in the definition of ''carpool,'' otherwise a loophole will be created.

EPA Response—The EPA disagrees with this comment. The term ''carpool'' is defined in the SIP narrative to help clarify what types of trip reduction measures may be effective in achieving compliance with the target APO. The ETR regulation, however, does not define the term ''carpool.'' The EPA does not believe that a loophole will be created by not defining ''regular basis'' in the definition of ''carpool'' in the SIP. Compliance with the target APO is not determined by the use of carpools, but rather through specific calculations of actual occupancy based on travel commute data collected through the employee surveys.

Comment 5—The environmental group commented that it is their understanding that the definition of employer would not allow different companies located at one common location to submit one ETR plan. Instead, each company would have to submit its own ETR plan.

EPA Response—The EPA agrees with this comment, and believes that the State regulation is unambiguous in requiring different companies that occupy a common worksite to submit individual company plans.

Comment 6—The environmental group commented that they believe motorcycles should be included in the definition of ''single occupancy vehicle'' (SOV).

EPA Response—The EPA agrees but believes that the SIP narrative is unambiguous in including motorcycles as part of the definition for a SOV.

Comment 7—The environmental group commented that the amount of credit given for alternative trip reduction strategies (e.g., alternative fuels) must be included in the ETR SIP. Currently, the SIP states that such credit will be calculated in accordance with procedures and formulas provided by the TNRCC.

EPA Response—It is our understanding that the State will not grant credit for alternative trip reduction strategies unless and until the protocols for granting such credit are adopted into the regulation. In addition, the EPA will need to approve any credit for alternative trip reduction strategies as part of the SIP. We understand that the State plans to revise the ETR SIP through the full rulemaking process, to incorporate appropriate credit for various alternative trip reduction strategies.

Comment 8—The environmental group asked for clarification of the term ''common control'' as used in the definition for ''worksite.''

EPA Response—In the definition of ''worksite,'' the State makes clear that the term ''common control'' is further defined under the definition of ''employer.'' We believe that the definition found under ''employer,'' is consistent with the EPA's guidance and is sufficiently clear as to what types of organizations are intended.

Comment 9—The environmental group objected to the use of two target APOs for the rural and urbanized areas. The group argued that all employers in the nonattainment area should be required to meet a 1.46 target APO, rather than giving those in outlying areas ''a break.''

EPA Response—Section 182(d)(1)(B) of the CAA states that, ''The guidance of the Administrator may specify average vehicle occupancy rates which vary for locations within a nonattainment area (suburban, center city, business district) or among nonattainment areas reflecting existing occupancy rates and the availability of high occupancy modes.'' The EPA believes that Congress intended to provide States with the flexibility to set different target APOs in a nonattainment area based on varying existing occupancy rates and the availability of alternative transportation modes.

In addition, as articulated in the EPA's ECO guidance (see page 16), the statutory phrase ''commuting trips between home and the workplace'' can be interpreted to refer to the trips by any employees in the area rather than only the employees of a specific employer. Although the rural areas are required to meet a target that is less than 25 percent above the AVO, the urbanized areas are required to meet a target greater than 25 percent above the AVO. Therefore, across the entire nonattainment area, the State of Texas is complying with the 25 percent increase requirement. The EPA's guidance explicitly allows for averaging and trading between employers such that an employer who did not achieve the target APO may still be in compliance if it obtains sufficient credit from another employer who exceeded the target. The TNRCC's two target area program is an institutionalized form of averaging between employers.

Comment 10—The environmental group argued that there was not adequate public participation in the development of the ETR regulation.

EPA Response—Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable

notice and public hearing.[1] Section 110(l) of the CAA similarly provides that each revision to an implementation plan submitted by a State under the CAA must be adopted by such State after reasonable notice and public hearing. 40 CFR 51.102 defines adequate public notice and comment to include: (1) Public notification of the proposed SIP revision in a major newspaper in the affected area; (2) a comment period of at least 30 days; (3) public hearing; and (4) State analysis and response to the public comments. The TNRCC met these requirements. Public notice on the proposed ETR regulation was published in the Houston ozone nonattainment area on May 30, 1992, in the Houston Chronicle, and on May 31, 1992, in the Baytown Sun, in accordance with the State of Texas's public notice requirements. Public notice was also published in the Texas Register on June 5, 1992 (see 17 Texas Register (TexReg) 4067). The State held a public hearing on the proposed regulations on June 30, 1992, and the comment period closed on July 8, 1992. Following the public hearing, the ETR regulation was adopted by the State on October 16, 1992. The publication of the final ETR regulation in the Texas Register on November 27, 1992 (see 17 TexReg 8297), includes an extensive analysis by the State of the comments received during the public comment period and the State's recommended action. The EPA therefore disagrees with this comment.

Comment 11—This environmental group argued that the term ''approvable ETR Plans'' is not defined, and recommended that the phrase ''plans that meet all ETR plan requirements under the CAAA,'' be used instead. The group also stated that the term ''convincingly demonstrate'' must be defined.

EPA Response—The term ''approvable ETR plans'' is clarified on page 28 of the SIP narrative, which states that the TNRCC ''will review ETR plans based on completeness and accuracy of information requested.'' We do not believe that the phrase ''plans that meet all ETR plan requirements under the CAAA'' provides any additional clarification because the CAA only requires that plans ''convincingly demonstrate'' prospective compliance. As to a definition of ''convincingly demonstrate,'' as described in more detail in our proposed approval of the Texas ETR SIP (see 58 FR 53694), the EPA provided four options for States to meet the requirement that plans ''convincingly demonstrate'' prospective compliance. The TNRCC met this requirement by selecting our fourth option by imposing significant penalties for not meeting the target APO.

Comment 12—The environmental group challenged the adequacy of the tracking and auditing procedures, and the current implementation of the SIP.

EPA Response—The EPA disagrees that the tracking and auditing procedures contained in the SIP are inadequate. Even though the EPA's ECO guidance did not require specific tracking and auditing procedures, the State's ETR SIP narrative and regulation address these provisions. The SIP and the regulation specify numerous recordkeeping and reporting requirements for affected employers. For example, § 114.21(g) of the regulation requires employers to maintain complete and accurate records for at least two years, and details seven types of information which must be included as part of those records. Section 114.21(h) details the specific reports that employers must submit to the TNRCC. Section 8.c. of the SIP specifies the State's ETR quality assurance procedures, which include auditing of employee surveys, announced and unannounced site visits, and auditing of the required employer records. We believe the TNRCC's procedures included in the SIP are fully adequate to ensure proper implementation of the ETR program.

As to the commenter's concerns about current implementation of the SIP, we do not believe that the TNRCC has fallen short of its responsibility to implement the SIP. During 1994, the TNRCC has increased the ETR staff, both in its headquarters office in Austin, and in its Regional office in Houston. The TNRCC has implemented the registration of affected employers, initiated training programs, and developed the necessary forms and systems to implement the ETR employer plans. The EPA believes that Texas's implementation of the ETR program to date does not indicate that the EPA should hesitate to approve the program.

Comment 13—The environmental group argued that allowing employers to demonstrate compliance with the target APO up to two years after the date of their plan submission deadline gave the employers too much time.

EPA Response—The EPA disagrees since the TNRCC regulation is fully consistent with the time frames specified in section 182(d)(1)(B) of the CAA, which requires that employer plans convincingly demonstrate compliance within two years of plan submittal.

Comment 14—The environmental group argued that records should by kept by affected employers for five years, rather than only two years.

EPA Response—This comment was also provided to the TNRCC during the State's public comment period. In response, the TNRCC stated that they believed two years of information appears to be adequate to assess compliance with the ETR requirements. The EPA agrees with the State because the primary driving force behind compliance with the target APO in Texas's program is the fact that substantial financial penalties may be imposed on an employer for not meeting the target APO.

Comment 15—The environmental group commented that the SIP narrative should state that ''falsifying or failing to maintain appropriate records will be considered a violation of [TNRCC] Regulation IV,'' rather than ''may be.''

EPA Response—This comment was submitted to the State during its public comment period. The State responded that it is understood that falsifying and failing to maintain required records are considered to be violations of the regulation. The EPA agrees with the State since section 114.21(g) of the ETR regulation clearly establishes mandatory requirements for all employers to maintain complete and accurate records for at least two years. In considering whether to issue a notice of violation for falsifying or failing to maintain records, the State looks at all facts and evaluates any possible mitigating circumstances before committing State resources to take an enforcement action. Therefore, the language contained in the SIP narrative is consistent with the State's enforcement discretion over when it is appropriate for the State to commit resources to initiate an enforcement action.

Comment 16—This environmental group argued that the SIP should not be approved because it does not detail the specific quality assurance procedures that will be carried out by the State. The group also commented that the SIP should state that audits will be conducted and site visits will be conducted, rather than ''may be.''

EPA Response—Please see our response to comments 12 and 15 above with respect to quality assurance and enforcement discretion.

Comment 17—The environmental group argued that the certification of training programs procedures and the public information program must be specified in the SIP. Also, the group asked that ''comprehensive training course'' be defined and that the training should include a discussion of the

[1] Also Section 172(c)(7) of the CAA requires that plan provisions for nonattainment areas meet the applicable provisions of Section 110(a)(2).

health, welfare effects, and costs due to air pollution.

EPA Response—While the EPA agrees that these items would be beneficial to include in the SIP, we do not believe that the integrity of the ETR program is threatened by not including these items since the TNRCC ETR SIP fully meets the requirements of the CAA.

Comment 18—The environmental group argued that the SIP narrative should read, ''failure to attain the appropriate target APO will be considered violations of [TNRCC] Regulation IV,'' rather than ''may be.''

EPA Response—Similar to our response to comment 15, we believe that section 114.21(j)(4) of the State's ETR regulation clearly establishes mandatory requirements for all employers to achieve final compliance with the target APO no later than two years after the applicable ETR plan submission deadline. It is therefore understood that not complying with this requirement would be considered to be a violation of the regulation. In considering whether to issue a notice of violation for not achieving the target, however, the State looks at all facts and evaluates any possible mitigating circumstances before committing State resources to take an enforcement action. Therefore, the language contained in the SIP narrative is consistent with the State's enforcement discretion over when it is appropriate for the State to commit resources to initiate an enforcement action.

Comment 19—This environmental group objected to the provision in the SIP narrative that ''[i]n formulating an enforcement policy, the [TNRCC] may consider any good faith effort made by the employer to achieve compliance.''

EPA Response—An enforcement policy is developed to cover the implementation and enforcement of a rule, not just the enforcement of a particular case. The policy would discuss the appropriate enforcement response that the State would take at each level of violation and might also discuss what and how much penalty, if any, to assess. Any enforcement policy of this type may always consider the good faith efforts made to comply. In addition, as discussed above, in considering whether to issue a notice of violation for not achieving the target, the State looks at all facts and evaluates any possible mitigating circumstances before committing State resources to take an enforcement action. For these reasons, we believe the language contained in the SIP narrative, is consistent with the State's enforcement discretion over when it is appropriate for the State to commit resources to initiate an enforcement action.

Comment 20—This environmental group commented that the methodology to estimate the emission reductions from the ETR program should be included in the SIP.

EPA Response—The EPA disagrees that the emission reduction estimates must be included in this SIP submittal. The estimates need to be included only to the extent that the State takes credit for the reductions to meet a Reasonable Further Progress or attainment demonstration requirement. In that case, the emissions estimates would need to be included in that SIP submittal.

III. Final Action

In this action, the EPA is approving the ETR SIP revision adopted by the State of Texas on October 16, 1992, and submitted to the EPA on November 13, 1992. The State of Texas has submitted a SIP revision implementing each of the ETR program elements required by section 182(d)(1)(B) of the CAA.

On February 23, 1994, the TNRCC adopted revisions to the ETR regulation, revising the compliance deadlines for affected employers to submit the ETR plans and comply with the target APO. These revisions were submitted to the EPA on March 9, 1994.

In this FR document, the EPA is approving only the ETR SIP revision which was submitted by the State of Texas on November 13, 1992. The EPA will act upon the subsequent ETR SIP revision submitted by the State on March 9, 1994, in a separate rulemaking action in the near future.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economical, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2)). The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the appropriate circuit by May 8, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Ozone.

Dated: December 23, 1994.

Jane N. Saginaw,

Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(91) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(91) Revisions to the TNRCC Regulation IV, concerning the Employer Trip Reduction program, were submitted by the Governor on November 13, 1992.

(i) Incorporation by reference.

(A) Revisions to the TNRCC Regulation IV (31 TAC § 114.21, Employer Trip Reduction Program), as adopted by the TACB on October 16, 1992.

(B) TACB Order 92–14 as adopted on October 16, 1992.

(C) SIP narrative entitled, ''Employer Trip Reduction Program, Houston-Galveston Area,'' adopted by the TACB on October 16, 1992, pages 31–38, addressing: 8.c. Quality Assurance Measures; 9. Training and Information Assistance; 11. Enforcement; and 12. Notification of Employers.

(ii) Additional material.

(A) SIP narrative entitled, ''Employer Trip Reduction Program, Houston-Galveston Area,'' adopted by the TACB on October 16, 1992.

(B) The TACB certification letter dated November 10, 1992, signed by William R. Campbell, Executive Director, TACB.

[FR Doc. 95–5439 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MI26–04–6805; FRL–5157–1]

Approval and Promulgation of Implementation Plan; Michigan Detroit-Ann Arbor NO_X Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is granting an exemption to the Detroit-Ann Arbor ozone nonattainment area from applicable oxides of nitrogen (NO_X) requirements found in the Clean Air Act (Act). Approval of the exemption would apply for various NO_X requirements including adoption and implementation of regulations addressing general conformity, transportation conformity, inspection and maintenance, reasonably available control technology, and new source review. The State of Michigan submitted a NO_X exemption request on November 12, 1993. A subsequent letter dated May 31, 1994 clarified this earlier submittal. This request is based on the fact that ozone monitoring in the Detroit-Ann Arbor area indicates that the average number of exceedances of the National Ambient Air Quality Standard for ozone during the most recent 3-year period, 1991 to 1993, is fewer than one per year. Given this monitoring data, Michigan petitioned for an exemption from the NO_X requirements based on a demonstration that additional reductions of NO_X would not contribute to attainment of the ozone standard.

EFFECTIVE DATE: This final rule will be effective April 6, 1995.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Copies of the request and the EPA's analysis are available for inspection at the following address: USEPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. (Please telephone Douglas Aburano at (312) 353–6960 before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Air Toxics and Radiation Branch (AT–18J), EPA, Region 5, Chicago, Illinois 60604, (312) 353–6960.

SUPPLEMENTARY INFORMATION:

I. Background

On November 12, 1993 the State of Michigan submitted a petition to the EPA requesting that the Detroit-Ann Arbor ozone nonattainment area be exempted from the requirement to implement NO_X controls pursuant to section 182(f) of the Act. The exemption request is based upon monitoring data which demonstrate that the average number of exceedances of the ozone standard in the Detroit-Ann Arbor area during the most recent 3-year period, 1991 through 1993, is fewer than one per year.

On August 10, 1994, EPA published a direct final rulemaking approving the NO_X exemption petition for the Detroit-Ann Arbor nonattainment area. During the 15 day public comment period, EPA received joint adverse comments from the Natural Resources Defense Council, Sierra Club Legal Defense Fund, and the Environmental Defense Fund and 2 requests for additional time to comment on this rulemaking from the State of New York and the Citizens Commission for Clean Air in the Lake Michigan Basin. The EPA published a document announcing the opening of a second comment period on October 6, 1994. The second comment period lasted until November 7, 1994. During the second comment period, the State of New York submitted adverse comments.

II. Public Comment/EPA Response

The following evaluation summarizes each comment received and EPA's response to the comment. A more detailed discussion of the State submittal and the rationale for the EPA's action based on the Act and cited references appear in EPA's technical support documents dated February 8, 1994 and December 1, 1994.

NRDC Comments

Following is a summary of comments received from the NRDC in a letter dated August 24, 1994 signed by Sharon Buccino. After each comment is EPA's response.

NRDC Comment 1: Certain commenters argued that NO_X exemptions are provided for in two separate parts of the Act, section 182(b)(1) and section 182(f). Because the NO_X exemption tests in subsections 182(b)(1) and 182(f)(1) include language indicating that action on such requests should take place ''when [EPA] approves a plan or plan revision,'' these commenters conclude that all NO_X exemption determinations by the EPA, including exemption actions taken under the petition process established by subsection 182(f)(3), must occur during consideration of an approvable attainment or maintenance plan, unless the area has been redesignated as attainment. These commenters also argue that even if the petition procedures of subsection 182(f)(3) may be used to relieve areas of certain NO_X requirements, exemptions from the NO_X conformity requirements must follow the process provided in subsection 182(b)(1), since this is the only provision explicitly referenced by section 176(c), the Act's conformity provisions.

EPA Response: Section 182(f) contains very few details regarding the administrative procedure for acting on NO_X exemption requests. The absence of specific guidelines by Congress leaves EPA with discretion to establish reasonable procedures, consistent with the requirements of the Administrative Procedure Act (APA).

The EPA disagrees with the commenters regarding the process for considering exemption requests under section 182(f), and instead believes that subsections 182(f)(1) and 182(f)(3) provide independent procedures by which the EPA may act on NO_X exemption requests. The language in subsection 182(f)(1), which indicates that the EPA should act on NO_X exemptions in conjunction with action on a plan or plan revision, does not appear in subsection 182(f)(3). And, while subsection 182(f)(3) references subsection 182(f)(1), the EPA believes that this reference encompasses only the substantive tests in paragraph (1) (and, by extension, paragraph (2)), not the procedural requirement that the EPA act on exemptions only when acting on SIPs. Additionally, paragraph (3) provides that ''person[s]'' (which

section 302(e) of the Act defines to include States) may petition for NO_X exemptions ''at any time,'' and requires the EPA to make its determination within 6 months of the petition's submission. These key differences lead EPA to believe that Congress intended the exemption petition process of paragraph (3) to be distinct and more expeditious than the longer plan revision process intended under paragraph (1).

Section 182(f)(1) appears to contemplate that exemption requests submitted under these paragraphs are limited to States, since States are the entities authorized under the Act to submit plans or plan revisions. By contrast, section 182(f)(3) provides that ''person[s]'' [1] may petition for a NO_X determination ''at any time'' after the ozone precursor study required under section 185B of the Act is finalized,[2] and gives EPA a limit of 6 months after filing to grant or deny such petitions. Since individuals may submit petitions under paragraph (3) ''at any time'' this must include times when there is no plan revision from the State pending at EPA. The specific timeframe for EPA action established in paragraph (3) is substantially shorter than the timeframe usually required for States to develop and for EPA to take action on revisions to a SIP. These differences strongly suggest that Congress intended the process for acting on personal petitions to be distinct—and more expeditious—from the plan-revision process intended under paragraph (1). Thus, EPA believes that paragraph (3)'s reference to paragraph (1) encompasses only the substantive tests in paragraph (1) (and, by extension, paragraph (2)), not the requirement in paragraph (1) for EPA to grant exemptions only when acting on plan revisions.

With respect to major stationary sources, section 182(f) requires States to adopt NO_X NSR and RACT rules, unless exempted. These rules were generally due to be submitted to EPA by November 15, 1992. Thus, in order to avoid the Act sanctions, areas seeking a NO_X exemption would have had to submit their exemption requests for EPA review and rulemaking action several months before November 15, 1992. In contrast, the Act specifies that the attainment demonstrations are not due until November 1993 or 1994 (and EPA may take 12–18 months to approve or disapprove the demonstration). For marginal ozone nonattainment areas (subject to NO_X NSR), no attainment demonstration is called for in the Act. For maintenance plans, the Act does not specify a deadline for submittal of maintenance demonstrations. Clearly, the Act envisions the submittal of and EPA action on exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations.

The Act requires conformity with regard to federally-supported NO_X generating activities in relevant nonattainment and maintenance areas. However, EPA's conformity rules explicitly provide that these NO_X requirements would not apply if EPA grants an exemption under section 182(f). In response to the comment that section 182(b)(1) should be the appropriate vehicle for dealing with exemptions from the NO_X requirements of the conformity rule, EPA notes that this issue has previously been raised in a formal petition for reconsideration of EPA's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. The issue, thus, is under consideration within EPA, but at this time remains unresolved. Additionally, subsection 182(f)(3) requires that NO_X exemption petition determinations be made by the EPA within six months. The EPA has stated in previous guidance that it intends to meet this statutory deadline as long as doing so is consistent with the Administrative Procedures Act. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are those that appear in EPA's final conformity regulations, and EPA remains bound by their existing terms.

NRDC Comment 2: Some commenters stated that the modeling required by EPA is insufficient to establish that NO_X reductions would not contribute to attainment since only one level of NO_X control, i.e., ''substantial'' reductions, is required to be analyzed. They further explained that an area must submit an approvable attainment plan before EPA can know whether NO_X reductions will aid or undermine attainment.

EPA Response: This comment is directed towards exemption approvals based on photochemical grid modeling. This comment does not apply in the case of Detroit-Ann Arbor because this exemption request is based on monitoring.

NRDC Comment 3: Three years of ''clean'' data fail to demonstrate that NO_X reductions would not contribute to attainment. EPA's policy erroneously equates the absence of a violation for one three-year period with ''attainment.''

EPA Response: The EPA has separate criteria for determining if an area should be redesignated to attainment under section 107 of the Act. The section 107 criteria are more comprehensive than the Act requires with respect to NO_X exemptions under section 182(f).

Under section 182(f)(1)(A), an exemption from the NO_X requirements may be granted for nonattainment areas outside an ozone transport region if EPA determines that ''additional reductions of [NO_X] would not contribute to attainment'' of the ozone NAAQS in those areas. In some cases, an ozone nonattainment area might attain the ozone standard, as demonstrated by 3 years of adequate monitoring data, without having implemented the section 182(f) NO_X provisions over that 3-year period. The EPA believes that, in cases where a nonattainment area is demonstrating attainment with 3 consecutive years of air quality monitoring data without having implemented the section 182(f) NO_X provisions, it is clear that the section 182(f) test is met since ''additional reductions of [NO_X] would not contribute to attainment'' of the NAAQS in that area. The EPA's approval of the exemption, if warranted, would be granted on a contingent basis (i.e., the exemption would last for only as long as the area's monitoring data continue to demonstrate attainment).

NRDC Comment 4: A waiver of NO_X controls is unlawful if such waiver will impede attainment and maintenance of the ozone standard in separated downwind areas.

EPA Response: As a result of the comments, EPA reevaluated its position on this issue and is revising the previously issued guidance. As described below, EPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO_X emissions from stationary and/or mobile sources where there is evidence, such as photochemical grid modeling, showing that NO_X emissions would contribute significantly to nonattainment in, or interfere with maintenance by, any other State. This action would be independent of any action taken by EPA on a NO_X exemption request for stationary sources under section 182(f). That is, EPA action to grant or deny a NO_X exemption request under section 182(f) would not shield that area from EPA action to require NO_X emission reductions, if necessary, under section 110(a)(2)(D).

Modeling analyses are underway in many areas for the purpose of

[1] Section 302(e) of the Act defines the term ''person'' to include States.

[2] The final section 185B report was issued July 30, 1993.

demonstrating attainment in the 1994 SIP revisions. Recent modeling data suggest that certain ozone nonattainment areas may benefit from reductions in NO_X emissions far upwind of the nonattainment area. For example, the northeast corridor and the Lake Michigan areas are considering attainment strategies which rely in part on NO_X emission reductions hundreds of kilometers upwind. The EPA is working with the States and other organizations to design and complete studies which consider upwind sources and quantify their impacts. As the studies progress, EPA will continue to work with the States and other organizations to develop mutually acceptable attainment strategies.

At the same time as these large scale modeling analyses are being conducted, certain nonattainment areas in the modeling domain have requested exemptions from NO_X requirements under section 182(f). Some areas requesting an exemption may be upwind of and impact upon downwind nonattainment areas. EPA intends to address the transport issue through section 110(a)(2)(D) based on a domain-wide modeling analysis.

Under section 182(f) of the Act, an exemption from the NO_X requirements may be granted for nonattainment areas outside an ozone transport region if EPA determines that ''additional reductions of (NO_X) would not contribute to attainment of the national ambient air quality standard for ozone in the area.''[3] As described in section 4.3 of the Guidelines for Determining the Applicability of Nitrogen Oxides Requirements under section 182(f), December 16, 1993 (''guidance'') document, EPA believes that the term ''area'' means the ''nonattainment area'' and that EPA's determination is limited to consideration of the effects in a single nonattainment area due to NO_X emissions reductions from sources in the same nonattainment area.

Section 4.3 of the guidance goes on to encourage, but not require, States/petitioners to include consideration of the entire modeling domain, since the effects of an attainment strategy may extend beyond the designated nonattainment area. Specifically, the guidance encourages States to ''consider imposition of the NO_X requirements if needed to avoid adverse impacts in downwind areas, either intra- or inter-State. States need to consider such impacts since they are ultimately responsible for achieving attainment in all portions of their State (see generally section 110) and for ensuring that emissions originating in their State do not contribute significantly to nonattainment in, or interfere with maintenance by, any other State (see section 110(a)(2)(D)(i)(I)).''

In contrast, section 4.4 of the guidance states that the section 182(f) demonstration would not be approved if there is evidence, such as photochemical grid modeling, showing that the NO_X exemption would interfere with attainment or maintenance in downwind areas. The guidance goes on to explain that section 110(a)(2)(D) (not section 182(f)) prohibits such impacts.

Consistent with the guidance in section 4.3, EPA believes that the section 110(a)(2)(D) and 182(f) provisions must be considered independently. Thus, if there is evidence that NO_X emissions in an upwind area would interfere with attainment or maintenance in a downwind area, that action should be separately addressed by the State(s) or, if necessary, by EPA in a section 110(a)(2)(D) action. In addition, a section 182(f) exemption request should be independently considered by EPA. In some cases, then, EPA may grant an exemption from across-the-board NO_X RACT controls under section 182(f) and, in a separate action, require NO_X controls from stationary and/or mobile sources under section 110(a)(2)(D). It should be noted that the controls required under section 110(a)(2)(D) may be more or less stringent than RACT, depending upon the circumstances.

NRDC Comment 5: Comments were received regarding exemption of areas from the NO_X requirements of the conformity rules. They argue that such exemptions waive only the requirements of section 182(b)(1) to contribute to specific annual reductions, not the requirement that conformity SIPs contain information showing the maximum amount of motor vehicle NO_X emissions allowed under the transportation conformity rules and, similarly, the maximum allowable amounts of any such NO_X emissions under the general conformity rules. The commenters admit that, in prior guidance, EPA has acknowledged the need to amend a drafting error in the existing transportation conformity rules to ensure consistency with motor vehicle emissions budgets for NO_X, but want EPA in actions on NO_X exemptions to explicitly affirm this obligation and to also avoid granting waivers until a budget controlling future NO_X increases is in place.

EPA Response: With respect to conformity, EPA's conformity rules[4,5] provide a NO_X waiver if an area receives a section 182(f) exemption. In its ''Conformity; General Preamble for Exemption From Nitrogen Oxides Provisions,'' 59 FR 31238, 31241 (June 17, 1994), EPA reiterated its view that in order to conform, nonattainment and maintenance areas must demonstrate that the transportation plan and TIP are consistent with the motor vehicle emissions budget for NO_X even where a conformity NO_X waiver has been granted. Due to a drafting error, that view is not reflected in the current transportation conformity rules. As the commenters correctly note, EPA states in the June 17th notice that it intends to remedy the problem by amending the conformity rule. Although that notice specifically mentions only requiring consistency with the approved maintenance plan's NO_X motor vehicle emissions budget, EPA also intends to require consistency with the attainment demonstration's NO_X motor vehicle emissions budget. However, the exemptions were submitted pursuant to section 182(f)(3), and EPA does not believe it is appropriate to delay the statutory deadline for acting on these petitions until the conformity rule is amended. As noted earlier in response to a previous issue raised by these commenters, this issue has also been raised in a formal petition for reconsideration of the Agency's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. This issue, thus, is under consideration within the Agency, but at this time remains unresolved. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are those that appear in the Agency's final conformity

[3] There are 3 NO_X exemption tests specified in section 182(f). Of these, 2 are applicable for areas outside an ozone transport region; the ''contribute to attainment'' test described above, and the ''net air quality benefits'' test. EPA must determine, under the latter test, that the net benefits to air quality in an area ''are greater in the absence of NO_X reductions'' from relevant sources. Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO_X exemption. Consequently, as stated in section 1.4 of the December 16, 1993 EPA guidance, ''[w]here any one of the tests is met (even if another test is failed), the section 182(f) NO_X requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.''

[4] ''Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act,'' November 24, 1993 (58 FR 62188).

[5] ''Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rules,'' November 30, 1993 (58 FR 63214).

regulations, and the Agency remains bound by their existing terms.

NRDC Comment 6: The Act does not authorize any waiver of the NO_X reduction requirements until conclusive evidence exists that such reductions are counter-productive.

EPA Response: EPA does not agree with this comment since it ignores Congressional intent as evidenced by the plain language of section 182(f), the structure of the Title I ozone subpart as a whole, and relevant legislative history. By contrast, in developing and implementing its NO_X exemption policies, EPA has sought an approach that reasonably accords with that intent. Section 182(f), in addition to imposing control requirements on major stationary sources of NO_X similar to those that apply for such sources of VOC, also provides for an exemption (or limitation) from application of these requirements if, under one of several tests, EPA determines that in certain areas NO_X reductions would generally not be beneficial. In subsection 182(f)(1), Congress explicitly conditioned action on NO_X exemptions on the results of an ozone precursor study required under section 185B. Because of the possibility that reducing NO_X in a particular area may either not contribute to ozone attainment or may cause the ozone problem to worsen, Congress included attenuating language, not just in section 182(f), but throughout the Title I ozone subpart, to avoid requiring NO_X reductions where it would be nonbeneficial or counterproductive. In describing these various ozone provisions (including section 182(f), the House Conference Committee Report states in pertinent part: ''[T]he Committee included a separate NO_X/VOC study provision in section [185B] to serve as the basis for the various findings contemplated in the NO_X provisions. The Committee does not intend NO_X reduction for reduction's sake, but rather as a measure scaled to the value of NO_X reductions for achieving attainment in the particular ozone nonattainment area.'' H.R. Rep. No. 490, 101st Cong., 2d Sess. 257–258 (1990). As noted in response to an earlier comment by these same commenters, the command in subsection 182(f)(1) that EPA ''shall consider'' the 185B report taken together with the timeframe the Act provides both for completion of the report and for acting on NO_X exemption petitions clearly demonstrate that Congress believed the information in the completed section 185B report would provide a sufficient basis for EPA to act on NO_X exemption requests, even absent the additional information that would be included in affected areas' attainment or maintenance demonstrations. However, while there is no specific requirement in the Act that EPA actions granting NO_X exemption requests must await ''conclusive evidence'', as the commenters argue, there is also nothing in the Act to prevent EPA from revisiting an approved NO_X exemption if warranted due to better ambient information.

In addition, the EPA believes (as described in EPA's December 1993 guidance) that section 182(f)(1) of the Act provides that the new NO_X requirements shall not apply (or may by limited to the extent necessary to avoid excess reductions) if the Administrator determines that any one of the following tests is met:

(1) In any area, the net air quality benefits are greater in the absence of NO_X reductions from the sources concerned;

(2) In nonattainment areas not within an ozone transport region, additional NO_X reductions would not contribute to ozone attainment in the area; or

(3) In nonattainment areas within an ozone transport region, additional NO_X reductions would not produce net ozone air quality benefits in the transport region.

Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO_X exemption.

Only the first test listed above is based on a showing that NO_X reductions are ''counter-productive.'' If one of the tests is met (even if another test is failed), the section 182(f) NO_X requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.

State of New York Comment 1: The State of New York reaffirms its objection to this proposed rulemaking originally stated in an August 24, 1994 letter. According to the May 27, 1994 memorandum from Mr. John Seitz and the December 1993 section 182(f) NO_X exemption guidance, the exemption cannot be approved if there is evidence that NO_X exemption would interfere with the attainment of a downwind area.

Section 3.3 of the December 1993 guidance states;

> The net air quality benefit test is not specifically limited to an ozone nonattainment area or ozone transport region and may be directed at a specific set of sources. Thus, a broad geographic area should be considered. The area may, in some cases, extend beyond an ozone nonattainment area or ozone transport region * * * Sufficient area is needed to allow for completion of the various chemical transformations of NO_X and interaction with other pollutants.

The latest results of the EPA regional oxidant modeling (ROM) indicate that emissions of NO_X from stationary sources west of the Ozone Transport Region contribute to increased ozone levels in the northeast, including New York State. These results show that control of NO_X emissions throughout the eastern United States will contribute to significant reductions in peak ozone levels within the ozone transport region (OTR).

EPA Response: With respect to the comments regarding the latest ROM results and downwind impacts in general, EPA refers the commenter to its previous responses to NRDC Comments 3 and 4.

The State of New York incorrectly cites section 3.3 of EPA's December 1993 guidance. Section 3.3 applies only to those areas applying for a NO_X exemption under the ''net air quality benefit'' test. The Detroit-Ann Arbor petition is based on the ''contribute to attainment'' test. The ''contribute to attainment'' test requires that only the emissions from the immediate nonattainment area be considered in evaluating the petition (see December 1993 guidance document, ''Guidelines for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f)'', section 4.3). In its petition the State of Michigan has demonstrated that the average number of exceedances of the ozone standard in the area during the past 3 years (1991–1993, the most current monitored years at the time the exemption request was made) is fewer than one per year which is sufficient to receive an exemption under this test. In addition, the 1994 ozone season has passed and no violation of the ozone standard has been recorded in the area.

State of New York Comment 2: The air quality monitoring data alone does not support this exemption proposal. This is supported by a July 28, 1994 letter from the Michigan Department of Natural Resources which states that ''(we) are nearly in violation of the ozone standard at several monitoring sites, primarily due to the many excursions we had in June.'' This proposal does not appear to consider this data. In addition, the data submitted for the period 1991 to 1993 (November 12, 1993 section 182(f) NO_X exemption request letter to EPA Region V) contain the maximum number of exceedances allowed to still be considered attainment. This does not provide a clear test that additional

reductions would not contribute to maintenance of attainment.

EPA Response: EPA is required to base its SIP decisions on the information duly submitted by a State in fulfillment of requirements imposed by the Act. The basis for granting this exemption is the fact that the information submitted by the State of Michigan demonstrates that this area has not experienced a violation of the ozone standard for the most recent 3 years of monitored data. Consistent with the established EPA policy, the fact that the area has recorded the maximum number of exceedances without violating the standard is irrelevant to a determination regarding whether an area is showing attainment for the period in question. What is relevant is whether or not the standard was violated, and the submitted data confirms that it was not. (See 40 CFR 50.9, 40 CFR part 50, appendix H, and Guideline for Interpretation of Ozone Air Quality Standards, January 1979, EPA–450/4–79–003.) In addition to the fact that the ozone standard was not violated for the years 1991–1993, the years upon which this exemption request is based, monitoring data throughout the 1994 ozone season for the Detroit-Ann Arbor area continues to show attainment of the ozone standard.

State of New York Comment 3: The State of New York strongly objects to the guidance developed to allow these exemptions to be processed. The May 27, 1994 memorandum ''Section 182(f) Nitrogen Oxides (NO_X Exemptions—Revised Process and Criteria'' allows a nonattainment area to consider only its own air quality monitoring data and does not require a demonstration that the area does not negatively impact the attainment status of downwind areas. The guidance memorandum also allows the nonattainment area to submit the NO_X exemption request without a redesignation or maintenance request. This does not provide the federal government with the appropriate information to make an informed judgment on the contribution of NO_X to nonattainment. Finally, this guidance did not undergo State review before issuance. While not necessarily required, it is EPA's usual practice to allow the States to have input in the development of guidance.

EPA Response: EPA's guidance regarding both the adequacy of the demonstration needed to qualify for a NO_X exemption and the extent to which downwind impacts need to be considered was developed in accordance with what EPA considers to be the best interpretation of the language in section 182(f) of the Act. For a more detailed discussion of that interpretation see EPA's responses to NRDC Comments 1 and 4 above. In addition, while it may be true that this guidance did not undergo State review before issuance, an opportunity for State participation is provided when such guidance is followed in proposed rulemaking actions. If a State objects to a proposed action and the guidance that action is based on, it is free to comment on the proposed action during the public comment period provided, as indeed, the State of New York has done here.

State of New York Comment 4: The Detroit-Ann Arbor area has been designated as moderate ozone nonattainment and as such requires a 15 percent rate-of-progress plan and a modeled attainment demonstration. It is unclear from the record whether these requirements have been fulfilled. An exemption request would need this information at a minimum to determine its validity. Please provide the status of these State implementation plan revisions.

EPA Response: As described previously in EPA's response to NRDC Comment 1, EPA action on NO_X exemption petitions submitted pursuant to section 182(f)(3) of the Act can be taken independently of action on attainment or maintenance demonstration plans or redesignation requests. Consequently, the issue of whether the State of Michigan's independent requirements under the Act to submit a 15 percent rate-of-progress plan and an attainment demonstration plan have been met do not affect EPA's ability to act on the State's exemption request. (See also EPA's response to NRDC Comment 3, describing the Agency's policy regarding the use of monitoring data to meet the ''contribute to attainment'' test).

III. Final Action

The comments received were found to warrant no changes from proposed to final action on this NO_X exemption request. Therefore, EPA is granting the Detroit-Ann Arbor section 182(f) exemption petition based upon the evidence provided by the State and the State's compliance with the requirements outlined in the Act and in EPA guidance. However, it should be noted that this exemption is being granted on a contingent basis; i.e., the exemption will last for only as long as the area's ambient monitoring data continue to demonstrate attainment of the ozone NAAQS.

The EPA's transportation conformity rule[6] and EPA's general conformity rule[7] also reference the section 182(f) exemption process as a means for exempting affected areas from NO_X conformity requirements, and the conformity requirements apply on an areawide basis. Since this petition for exemption is areawide, as opposed to source-specific, an approval would also exempt this area from the NO_X conformity requirements of the Act (see John Seitz May 27, 1994 ''Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria'' memorandum). Additionally, the Inspection/Maintenance (I/M) Program Final Rule (57 FR 52950) allows for the omission of the basic I/M NO_X requirements if a 182(f) exemption is granted to an area. Michigan does not currently have—or need—an enhanced I/M program. If the State did adopt such a program (because further emissions reductions necessary to address other portions of the Act could be obtained through an enhanced program), it would have to be designed to offset NO_X increases resulting from the vehicle repairs due to hydrocarbon (HC) and carbon monoxide (CO) failures.

If, subsequent to the NO_X waiver being granted, EPA determines that the area has violated the standard, the section 182(f) exemption, as of the date of the determination, would no longer apply. EPA would notify the State that the exemption no longer applies, and would also provide notice to the public in the Federal Register. If an exemption is revoked, the State must comply with any applicable NO_X requirements set forth in the Act, such as those for NO_X RACT, NSR, I/M, and conformity. The air quality data relied on for the above determinations must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System. Additionally, the State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area.

The Federal Register document revoking the NO_X exemption would also establish the schedule for adoption and implementation of those NO_X requirements the area was previously exempt.

[6] ''Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act'' November 24, 1993 (58 FR 62188).

[7] ''Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule'' November 30, 1993 (58 FR 63214).

On November 12, 1993 the State submitted a redesignation request. Section 175(A) requires submittal of a maintenance plan for areas that are redesignating to attainment. This maintenance plan must contain contingency measures which shall be implemented if a violation of the ozone standard occurs. Consequently, if the State's redesignation request is approved, the NO_X requirements found in the maintenance plan for that area would, thereafter, apply as long as the area is designated attainment for the ozone standard.

This action will become effective on April 6, 1995.

IV. Miscellaneous

A. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

B. Executive Order 12866

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

C. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976).

D. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Oxides of nitrogen, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: February 8, 1995.

Norman R. Niedergang,

Acting Regional Administrator.

40 CFR part 52 is amended as follows.

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671(q).

Subpart X—Michigan

2. Section 52.1174 is amended by adding paragraph (j) to read as follows:

§ 52.1174 Control strategy: Ozone.

* * * * *

(j) Approval—On November 12, 1993, the Michigan Department of Natural Resources submitted a petition for exemption from the oxides of nitrogen requirements of the Clean Air Act for the Detroit-Ann Arbor ozone nonattainment area. The submittal pertained to the exemption from the oxides of nitrogen requirements for conformity, inspection and maintenance, reasonably available control technology, and new source review. These are required by sections 176(c), 182(b)(4), and 182(f) of the 1990 amended Clean Air Act, respectively. If a violation of the ozone standard occurs in the Detroit-Ann Arbor ozone nonattainment area, the exemption shall no longer apply.

[FR Doc. 95–5444 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA 102–8–6860a; FRL–5160–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the Bay Area Air Quality Management District (BAAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In addition, the final action on these rules serves as a final determination that any deficiencies in these rules noted in prior proposed rulemakings have been corrected. The rules control VOC emissions from pump and compressor seals at petroleum refineries, chemical plants, bulk plants, and bulk terminals; large commercial bakeries; and polyester resin operations. Thus, EPA is finalizing the approval of these rules into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This final rule is effective on May 8, 1995 unless adverse or critical comments are received by April 6, 1995. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street SW., Washington, DC 20460,

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Applicability

The BAAQMD rules being approved into the California SIP include: 8–25, Pump and Compressor Seals at Petroleum Refineries, Chemical Plants, Bulk Plants, and Bulk Terminals; 8–42, Large Commercial Bakeries; and 8–50, Polyester Resin Operations. These rules were submitted by the California Air Resources Board (CARB) to EPA on September 28, 1994.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the Bay Area. 43 FR 8964, 40 CFR 81.305. Because this area was unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. (40 CFR 52.222). On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above district's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The San Francisco-Bay Area (Bay Area) is classified as moderate;[2] therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on September 28, 1994, including the rules being acted on in this document. This notice addresses EPA's direct-final action for the BAAQMD's Rules 8–25, Pump and Compressor Seals at Petroleum Refineries, Chemical Plants, Bulk Plants, and Bulk Terminals; 8–42, Large Commercial Bakeries; and 8–50, Polyester Resin Operations. The BAAQMD adopted Rules 8–25 and 8–42 on June 1, 1994 and Rule 8–50 on June 15, 1994.

These submitted rules were found to be complete on November 22, 1994 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[3] and are being finalized for approval into the SIP.

Rule 8–25 controls volatile organic compound (VOC) emissions from pumps and compressors; Rule 8–42 controls VOC emissions from bakery ovens; and Rule 8–50 controls VOC emissions from manufacturing or production operations using polyester resins. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of the BAAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rules.

EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to ''fix-up'' their RACT rules. See section 182(a)(2)(A). The CTG applicable to Rule 8–25 is entitled, ''Control of Volatile Organic Leaks from Synthetic Organic Chemical and Polymer Manufacturing'' EPA–450/3–83–006), U.S. EPA, March 1984. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP. For some source categories, such as large commercial bakeries (BAAQMD Rule 8–42) and polyester resin operations (BAAQMD Rule 8–50), EPA did not publish a CTG. In these cases, the district may determine what controls are required by reviewing the operation of facilities subject to the regulation and evaluating regulations for similar sources in other areas. EPA did publish an Alternative Control Technology Document (ACT) entitled, ''Alternative Control Technology Document for Bakery Oven Emissions'', EPA 453/R–92–017, December 1972 as guidance for bakery sources.

BAAQMD Rule 8–25, Pump and Compressor Seals at Petroleum Refineries, Chemical Plants, Bulk Plants, and Bulk Terminals improves the current SIP rule by:

- Revising the compliance dates.
- Adding definitions to clarify the rule.
- Adding visual inspection requirements.
- Adding new test method requirements.

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice'' (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Bay Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

• Adding recordkeeping requirements.

• Adding a ''burden of proof'' requirement for exemptions.

BAAQMD Rule 8–42, Large Commercial Bakeries, is a new rule which was adopted to control emissions of VOCs from large commercial bread bakeries. However, Rule 8–42 has been in effect in the Bay Area since 1989. The rule requires:

• All ovens to be vented to an emission control system.

• Sources to maintain records of the emissions control system's key operating parameters on a daily basis.

• Sources claiming exemptions to provide the necessary information to substantiate the exemption.

• Sources to use district method ST–32 for determination of emissions.

• The use of an emissions factor table for calculation of emissions.

BAAQMD Rule 8–50, Polyester Resin Operations, is a new rule which limits the emission of VOCs from polyester resin operations. The rule provides the following:

• Standards which affect the application and curing of resin, gel coat application and curing, and clean-up solvents.

• Standards for resins and gel coats are not applicable to polyester resin operations that choose to install and operate emission control equipment.

• Storage requirements for surface preparation and clean-up solvents.

• Recordkeeping requirements and test methods.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, the BAAQMD's Rule 8–25, Pump and Compressor Seals at Petroleum Refineries, Chemical Plants, Bulk Plants, and Bulk Terminals; Rule 8–42, Large Commercial Bakeries; and Rule 8–50, Polyester Resin Operations are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. The final action on these rules serves as a final determination that any deficiencies in these rules noted in prior proposed rulemakings have been corrected.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective May 8, 1995, unless, by April 6, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective May 8, 1995.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over population of less than 50,000.

SIP approvals under sections 110 and 301(a) and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action.

The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 10, 1995.

Felicia Marcus,

Regional Administrator.

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(199)(i)(A)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(199) * * *

(i) * * *

(A) * * *

(*3*) Rules 8–25 and 8–42, adopted on June 1, 1994 and Rule 8–50, adopted on June 15, 1994.

* * * * *

[FR Doc. 95–5348 Filed 3–6–95; 8:45 am]

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40 CFR Parts 52 and 81

[TX–53–1–6843a; FRL–5163–5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Texas; Approval of the Maintenance Plan for Victoria County and Redesignation of the Victoria County Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On July 27, 1994 the State of Texas submitted a maintenance plan and a request to redesignate the Victoria County, Texas ozone nonattainment area to attainment. Under the Clean Air Act (CAA), nonattainment areas may be redesignated to attainment if sufficient data are available to warrant the redesignation and the area meets the other CAA redesignation requirements. In this action, EPA is approving Texas' redesignation request because it meets the maintenance plan and redesignation

requirements set forth in the CAA and EPA is approving the 1992 base year emissions inventory. The approved maintenance plan will become a federally enforceable part of the State Implementation Plan (SIP) for Victoria County, Texas.

DATES: This final rule is effective on May 8, 1995, unless notice is received by April 6, 1995 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register (FR).

ADDRESSES: Comments should be mailed to Guy R. Donaldson, Acting Chief, Air Planning Section (6T–AP), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State's petition and other information relevant to this action are available for inspection during normal hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, P.O. Box 13087, Austin, Texas 78711–3087.

Anyone wishing to review this petition at the U.S. EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Mick Cote, Planning Section (6T–AP), Air Programs Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7219.

SUPPLEMENTARY INFORMATION:

Background

The CAA, as amended in 1977 required areas that were designated nonattainment based on a failure to meet the ozone national ambient air quality standard (NAAQS) to develop SIPs with sufficient control measures to expeditiously attain and maintain the standard. Victoria County, Texas was designated under section 107 of the 1977 CAA as nonattainment with respect to the ozone NAAQS on March 3, 1978 (40 CFR 81.344). In accordance with section 110 of the 1977 CAA, the State of Texas submitted an ozone SIP as required by part D on April 13, 1979. EPA fully approved this ozone SIP on March 25, 1980 (45 FR 19244), and August 13, 1984 (49 FR 32190).

On November 15, 1990, the CAA Amendments of 1990 were enacted (Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). The ozone nonattainment designation for Victoria County continued by operation of law according to section 107(d)(1)(C)(i) of the CAA, as amended in 1990 (See 56 FR 56694, November 6, 1991). Since the State had not yet collected the required three years of ambient air quality data necessary to petition for redesignation to attainment, the nonattainment area was further designated as nonclassifiable-incomplete data for ozone.

The Texas Natural Resource Conservation Commission (TNRCC) more recently has collected ambient monitoring data that show no violations of the ozone National Ambient Air Quality Standard (NAAQS) of .12 parts per million. The State developed a maintenance plan for Victoria County, and solicited public comment during a public hearing on July 7, 1994. Accordingly, on July 27, 1994, Texas requested redesignation of the area to attainment with respect to the ozone NAAQS and submitted an ozone maintenance SIP for Victoria County. Please see the TSD for the detailed air quality monitoring data.

Evaluation Criteria

The 1990 Amendments revised section 107(d)(3)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment: (1) The area must have attained the applicable NAAQS; (2) the area must meet all applicable requirements under section 110 and part D of the CAA; (3) the area must have a fully approved SIP under section 110(k) of the CAA; (4) the air quality improvement must be permanent and enforceable; and, (5) the area must have a fully approved maintenance plan pursuant to section 175A of the CAA. Section 107(d)(3)(D) allows a Governor to initiate the redesignation process for an area to apply for attainment status. Please see EPA's Technical Support Document (TSD) for a detailed discussion of these requirements.

(1) Attainment of the NAAQS for Ozone

Attainment of the ozone NAAQS is determined based on the expected number of exceedances in a calendar year. The method for determining attainment of the ozone NAAQS is contained in 40 CFR 50.9 and appendix H to that section. The simplest method by which expected exceedances are calculated is by averaging actual exceedances at each monitoring site over a three year period. An area is in attainment of the standard if this average results in expected exceedances for each monitoring site of 1.0 or less per calendar year. When a valid daily maximum hourly average value is not available for each required monitoring day during the year, the missing days must be accounted for when estimating exceedances for the year. Appendix H provides the formula used to estimate the expected number of exceedances for each year.

The State of Texas' request is based on an analysis of quality-assured ozone air quality data which is relevant to both the maintenance plan and to the redesignation request. The data come from the State and Local Air Monitoring Station network. The request is based on ambient air ozone monitoring data collected for 36 consecutive months from May 3, 1991, through May 2, 1994, encompassing 3 valid ozone seasons (1991–1993). The data clearly show an expected exceedance rate of zero for the ozone standard.

Appendix H does not explicitly address the situation where a new site collects data for only a portion of the calendar year. However, this situation has been addressed in an EPA memorandum, ''Ozone and Carbon Monoxide Design Value Calculations,'' William Laxton, Director, Technical Support Division, OAQPS, June 18, 1990 (Laxton memo). The missing data penalty created by the calculation is designed to encourage prompt repair or replacement of monitors, rather than to discourage air pollution control agencies from installing new monitoring sites in excess of the number required by 40 CFR part 58. For this reason, the Laxton memo essentially allows an agency which installs a monitoring site to base the estimated exceedance calculation for the initial year on the portion of the year following start-up of the monitor. Based on the underlying reasoning of the Laxton memo and the fact that there were no exceedances at the monitoring site during the peak ozone season of May through September for the 3-year monitoring period, EPA accepted the data as an adequate demonstration that the ozone standard was attained in Victoria County.

In addition to the demonstration discussed above, EPA required completion of air network monitoring requirements set forth in 40 CFR part 58. This included a quality assurance plan revision and a monitoring network review to determine the adequacy of the ozone monitoring network. The TNRCC fulfilled these requirements to complete documentation for the air quality demonstration. The TNRCC has also

committed to continue monitoring in this area in accordance with 40 CFR part 58.

In sum, EPA believes that the data submitted by the TNRCC provides an adequate demonstration that Victoria County attained the ozone NAAQS. Moreover, the monitoring data continue to show attainment in 1994 and in 1995 to date.

If the monitoring data records a violation of the NAAQS before the direct final action is effective, the direct final approval of the redesignation will be withdrawn and a proposed disapproval substituted for the direct final approval.

(2) Section 110 Requirements

For purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the CAA, EPA has reviewed the SIP to ensure that it contains all measures that were due under the CAA prior to or at the time the State submitted its redesignation request, as set forth in EPA policy. EPA interprets section 107(d)(3)(E)(v) of the CAA to mean that, for a redesignation request to be approved, the State must have met all requirements that applied to the subject area prior to or at the same time as the submission of a complete redesignation request. Requirements of the CAA that come due subsequently continue to be applicable to the area at later dates (see section 175A(c)) and, if redesignation of any of the areas is disapproved, the State remains obligated to fulfill those requirements. These requirements are discussed in the following EPA documents: ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' John Calcagni, Director, Air Quality Management Division, September 4, 1992, ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' John Calcagni, Director, Air Quality Management Division, October 28, 1992, and ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Michael H. Shapiro, Acting Assistant Administrator, September 17, 1993.

EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 110(a)(2). The SIP contains enforceable emission limitations, requires monitoring, compiling, and analyzing ambient air quality data, requires preconstruction review of new major stationary sources and major modifications to existing ones, provides for adequate funding, staff, and associated resources necessary to implement its requirements, and requires stationary source emissions monitoring and reporting.

(3) Additional Section 110 and Part D Requirements

The TNRCC submitted a SIP revision entitled ''Revisions to Texas Regulation V and the General Rules to Meet Reasonably Available Control Technology Requirements'' (Texas RACT Catch-up and Victoria County Fix-up). This SIP revision contains certain recordkeeping and monitoring requirements necessary for Victoria County to have a fully-approved SIP under section 110. The EPA is approving the Texas RACT Catch-up and Victoria County Fix-up SIP revisions together in a separate action concurrent with this Victoria County redesignation request. The Texas RACT Catch-up and Victoria County Fix-up direct final approval notice is located in the final rules section of this Federal Register. If adverse or critical comments are received on the Texas RACT Catch-up and Victoria County Fix-up action, the notice will be converted from a direct final action to a proposal and those comments addressed in a subsequent final action. In such a case, the Victoria County redesignation direct final action will be converted to a proposal as well. As discussed earlier in this document, all of the SIP requirements must be met by the TNRCC and approved by EPA into the SIP prior to or concurrent with final action on the redesignation request.

Before Victoria County can be redesignated to attainment, it also must have fulfilled the applicable requirements of part D of the CAA. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a)(1). Since Victoria County is considered nonclassifiable, the State is only required to meet the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176.

Section 172(c)(1) requires the implementation of all reasonably available control technology (RACT) as expeditiously as possible. The State of Texas has adopted VOC RACT rules under the following general categories: General Volatile Organic Compound Sources, Volatile Organic Compound Transfer Operations, Petroleum Refining and Petrochemical Processes, Solvent-Using Processes, Miscellaneous Industrial Sources, Consumer-Related Sources, and Administrative Provisions. Incomplete/no data areas such as Victoria County must correct any RACT deficiencies regarding the enforceability of existing rules in order to be redesignated to attainment. To this end, certain monitoring, recordkeeping, and reporting requirements are being revised to improve the enforceability of RACT in Victoria County in the concurrent action discussed above. With the approval of these revisions the requirements of section 172(c)(1) are fully met for Victoria County.

Section 172(c)(2) lists requirements for a demonstration of reasonable further progress (RFP). An RFP demonstration assumes a long nonattainment period or a large amount of reductions required to attain the standard. Because Victoria County is already in attainment, EPA considers Federal measures, such as the Federal Motor Vehicle Control Program and Reid Vapor Pressure requirement, sufficient to meet the RFP requirement. See the General Preamble for the Implementation of Title I (57 FR 13498, 13525–26, 13564).

Section 172(c)(3) requires an emissions inventory as part of an area's attainment demonstration. The emissions inventory requirement has been met by the submission and approval with this action of the 1992 inventory for Victoria County.

Section 172(c)(9) requires that contingency measures be developed should an area fail to meet the reasonable further progress requirement. As explained in the General Preamble (57 FR 13525), EPA believed it not appropriate to apply this requirement to incomplete/no data areas such as Victoria County. Moreover, since Victoria County has met the RFP requirement, and has demonstrated attainment through air monitoring data, the contingency measures requirement of section 172(c)(9) no longer applies (57 FR 13564). Thus, the State is not required to submit section 172(c)(9) contingency measures for Victoria County to be redesignated.

Section 172(c)(5) requires the development of a New Source Review (NSR) Program. Although Texas has had an NSR program, revisions required by the 1990 Act have not been approved by EPA. Texas, therefore, does not currently have a fully approved NSR program. However, in an October 14, 1994 memo from Mary D. Nichols, Assistant Administrator for Air and

Radiation, entitled ''Part D New Source Review (part D NSR) Requirements for Areas Redesignating to Attainment'' (NSR memo), EPA amended one aspect of the redesignation guidance by removing the requirement that an area have an approved NSR program prior to the area requesting redesignation to attainment. The NSR memo explained that EPA now believes that a *de minimis* exception to the requirement of section 107(d)(3)(E) for an approved part D NSR program is justifiable in certain cases where the adoption and full approval of a part D NSR program as a prerequisite to redesignation would not be of significant environmental value. Once an area has been redesignated to attainment, a part D NSR program must be replaced by the Prevention of Significant Deterioration (PSD) program. Victoria County's maintenance plan demonstrates maintenance without the use of the NSR program; therefore, EPA does not require the part D NSR program to be approved prior to approval of this redesignation request. Please see the TSD for a copy of the NSR memo.

Section 176(c) of the CAA requires States to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (''transportation conformity''), as well as to all other Federal actions (''general conformity'').

Section 176 further provides that the conformity revisions to be submitted by the States must be consistent with Federal conformity regulations that the CAA required EPA to promulgate. Congress provided for the State revisions to be submitted one year after the date for promulgation of final EPA conformity regulations. When that date passed without such promulgation, EPA's General Preamble for the implementation of title I informed the State that its conformity regulations would establish a submittal date (see 57 FR 13498, 13557 (April 16, 1992)). The EPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62118) and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A.

Pursuant to 40 CFR 51.396 of the transportation conformity rule and 40 CFR 51.851 of the general conformity rule, the State of Texas was required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, Texas was required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Texas submitted its transportation conformity rules to EPA on November 6, 1994. The State's general conformity rules were submitted to EPA on November 22, 1994. As these requirements did not come due until after the submission date of the redesignation request, these conformity rule submissions need not be approved prior to taking action on this redesignation request.

The EPA recently published additional guidance on maintenance plans and their applicability to conformity issues in a memorandum entitled ''Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas,'' (limited maintenance plan memo) from Sally L. Shaver, Director, Air Quality Strategies & Standards Division, on November 16, 1994. This limited maintenance plan memo discusses maintenance requirements for certain areas petitioning for redesignation to attainment. Nonclassifiable ozone nonattainment areas with design values less than 85% of the exceedance level of the ozone standard are no longer required to project emissions over the maintenance period.

The Federal transportation conformity rule (58 FR 62188) and the Federal general conformity rule (58 FR 63214) apply to areas operating under maintenance plans. Under either rule, one means by which a maintenance area can demonstrate conformity for Federal projects is to indicate that expected emissions from planned actions are consistent with the emissions budget for the area. Based on guidance discussed in the limited maintenance plan memo, emissions inventories in areas that qualify for the limited maintenance plan approach are not required to be projected over the life of the maintenance plan. EPA feels it is unreasonable to expect that such an area will experience so much growth in that period that a violation of the NAAQS would occur. Emissions budgets in limited maintenance plan areas would be treated as essentially not constraining emissions growth, and would not need to be capped for the maintenance period. In these cases, Federal projects subject to conformity determinations could be considered to satisfy the ''budget test'' of the Federal conformity rules.

(3) Fully Approved SIP

The EPA finds that, upon approval of the Texas RACT Catch-up and Victoria County Fix-up SIP revisions, the State of Texas will have a fully approved SIP for Victoria County.

(4) Permanent and Enforceable Measures

Under the CAA, EPA approved Texas' SIP control strategy for the Victoria County nonattainment area, satisfied that the rules and the emission reductions achieved as a result of those rules were enforceable. Several Federal and Statewide rules are in place which have significantly improved the ambient air quality in Victoria County. Existing Federal programs, such as the Federal Motor Vehicle Control Program and the Reid Vapor Pressure (RVP) limit of 7.8 pounds per square inch for gasoline in Victoria County, will not be lifted upon redesignation. These programs will counteract emissions growth as the county experiences economic growth over the life of the maintenance plan.

The State adopted VOC rules such as degreasing and solvent clean-up processes; surface coating rules for large appliances, furniture, coils, paper, fabric, vinyl, cans, miscellaneous metal parts and products, and factory surface coating of flat wood paneling; solvent-using rules for graphic arts, and miscellaneous industrial source rules such as for cutback asphalt. The applicable RACT rules will also remain in place in Victoria County. In addition, the State permits program, the PSD permits program, and the Federal Operating Permits program will help counteract emissions growth.

The EPA finds that the combination of existing EPA-approved SIP and Federal measures ensure the permanence and enforceability of reductions in ambient ozone levels that have allowed the area to attain the NAAQS.

(5) Fully Approved Maintenance Plan Under Section 175A

In today's document, EPA is approving the State's maintenance plan for Victoria County because EPA finds that the TNRCC's submittal meets the requirements of section 175A. Thus, the Victoria County nonattainment area will have a fully approved maintenance plan in accordance with section 175A as of the effective date of this redesignation. Section 175A of the CAA sets forth the elements of a maintenance plan for

areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems. Each of the section 175A plan requirements is discussed below.

Demonstration of Maintenance

The requirements for an area to redesignate to attainment are discussed in the memorandum entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni memo). One aspect of a complete maintenance demonstration discussed in the Calcagni memo is the requirement to develop an emission inventory from one of the three years during which the area has demonstrated attainment. This inventory should include volatile organic compounds (VOC), oxides of nitrogen (NO_X), and CO emissions from the area in tons per day measurements. In addition to the Calcagni memo, more recent guidance on the redesignation of certain nonattainment areas to attainment is provided in the limited maintenance plan memo.

Attainment Inventory

The TNRCC adopted comprehensive inventories of VOC, NO_X, and CO emissions from area, stationary, and mobile sources using 1992 as the base year to demonstrate maintenance of the ozone NAAQS. EPA has determined that 1992 is an appropriate year on which to base attainment level emissions because EPA policy allows States to select any one of the three years in the attainment period as the attainment year inventory. The State submittal contains the detailed inventory data and summaries by source category.

The TNRCC provided the stationary source estimates for each company meeting the emissions criteria by requiring the submission of complete emission inventory questionnaires which had been designed to obtain site-specific data. The TNRCC generated area source emissions for each source category based on EPA's ''Procedures for the Preparation of Emissions Inventories for Precursors of Carbon Monoxide and Ozone, Volume I'', and the EPA document entitled ''Compilation of Air Pollutant Emission Factors''. The non-road mobile source inventory was developed using methodology recommended in EPA's ''Procedures for Emission Inventory Preparation. Volume IV: Mobile Sources''. Additional data was provided with reference to an EPA-sponsored study entitled ''Nonroad Engine Emission Inventories for CO and Ozone Nonattainment Boundaries.'' On-road emissions of VOC, NO_X, and CO were calculated on a county-wide basis using EPA's MOBILE5a computer model. The biogenic emissions were calculated using the EPA software package entitled PC-BEIS. This package yields results in U.S. short tons per day (daily emissions only).

In the limited maintenance plan memo, EPA set forth new guidance on maintenance plan requirements for certain ozone nonattainment areas. The limited maintenance plan memo identified criteria through which certain nonclassifiable ozone nonattainment areas could choose to submit less rigorous maintenance plans. As mentioned earlier, the method for calculating design values is presented in the June 18, 1990 memorandum, ''Ozone and Carbon Monoxide Design Value Calculations,'' from William G. Laxton, former Director of the Office of Air Quality Planning and Standards Technical Support Division. Nonclassifiable ozone nonattainment areas whose design values are calculated at or below 0.106 parts per million (ppm) at the time of redesignation, are no longer required to project emissions over the maintenance period. The 0.106 ppm represents 85% of the ozone exceedance level of 0.125 ppm. As explained in the November 16, 1994 limited maintenance plan memo, the EPA believes if an area begins the maintenance period at or below 85% of the ozone exceedance level of the NAAQS, the existing Federal and SIP control measures, along with the PSD program, will be adequate to assure maintenance of the ozone NAAQS in the area. Victoria County has a calculated design value of 0.100 ppm. In light of that, and the lack of any recent history of violations of the ozone NAAQS, EPA believes that it is reasonable to conclude that the combination of the RACT measures in the SIP, the Federal Motor Vehicle Control Program, the RVP limit of 7.8 pounds per square inch, and the applicability of preconstruction review in accordance with the PSD requirements of part C of Title I, provides adequate assurance that the ozone NAAQS will be maintained. Thus, the EPA believes Victoria County qualifies for the limited maintenance plan approach.

The following is a table of the revised average peak ozone season weekday VOC and NO_X emissions for the biogenic and major anthropogenic source categories for the 1992 attainment year inventory.

SUMMARY OF VOC EMISSIONS

Source category	Tons per year	Tons per day
Point Sources	2180.10	5.97
Area Sources	1940.41	6.04
Non-Road Mobile Sources	962.24	3.55
On-Road Mobile Sources*	.....	4.44
Biogenic Sources*	.....	26.32
Total*	.....	46.32

*Tons per year calculations were not submitted for these categories.

SUMMARY OF NO_X Emissions

Source category	Tons per year	Tons per day
Point Sources	13339.91	36.55
Area Sources	206.73	0.35
Non-Road Mobile Sources	985.47	3.31
On-Road Mobile Sources*	.....	8.01
Biogenic Sources*	.....	.....
Total*	.....	48.22

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The attainment inventory submitted by TNRCC for Victoria County meets the redesignation requirements as discussed in the Calcagni memo and limited maintenance plan memo. Therefore, the EPA is today approving the emissions inventory component of the maintenance plan for Victoria County.

Continued Attainment

Continued attainment of the ozone NAAQS in Victoria County will depend, in part, on the Federal and State control measures discussed previously. However, the ambient air monitoring site will remain active at its present location during the entire length of the maintenance period. This data will be quality assured and submitted to the Aerometric Information and Retrieval System (AIRS) on a monthly basis. As

discussed in the limited maintenance plan memo, certain monitored ozone levels will provide the basis for triggering measures contained in the contingency plan. Additionally, as discussed above, during year 8 of the maintenance period, TNRCC is required to submit a revised plan to provide for maintenance of the ozone standard in Victoria County for the next ten years.

Contingency Plan

Section 175A of the CAA requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area to attainment. The contingency plan should clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the State. The State should also identify specific triggers which will be used to determine when the measures need to be implemented.

The TNRCC has selected Stage I vapor control as its contingency measure. At any time during the maintenance period, if the Victoria County air quality monitor records a third exceedance of the ozone NAAQS within any consecutive three-year period (a level below the NAAQS), the TNRCC will promulgate a rule change to implement Stage I gasoline controls in Victoria County. This rule will be submitted to EPA within 6 months of the third exceedance. The compliance date for applicable sources in Victoria County will be 6 months after TNRCC adopts the rule change. This contingency measure and schedule satisfies the requirements of section 175A(d).

In addition, the State has adopted several voluntary measures that, although not enforceable and therefore not contingency measures that could satisfy section 175A, are expected to contribute to the maintenance of air quality. The triggers for the voluntary measures, with the exception of the emissions projection measure, are at ozone levels below the standard, to allow the State to take early action to address a possible violation of the NAAQS before it occurs. The following trigger levels would activate measures: The ozone design value equals or exceeds 85% of the exceedance level of the ozone NAAQS, or 0.106 ppm; or the monitor shows one to four exceedances of the ozone NAAQS during any consecutive three-year period.

If the design value of Victoria County exceeds .106 ppm at any time during the maintenance period, Victoria County officials will establish a voluntary ozone advisory program. The TNRCC will coordinate the dissemination of information to the county with respect to ozone advisory predictions, voluntary compliance measures on ozone advisory days, and public notification. The ozone advisory program will be functional within 6 months of notification by the TNRCC that the ozone design value for Victoria County has reached the trigger level.

If the monitor records an exceedance of the ozone NAAQS, Victoria County officials will establish a formal ozone advisory program. This formal program will be staffed sufficiently to operate the program on a daily basis during the peak ozone season (May 1–September 30). The formal program will be staffed and functional within 6 months of notification by TNRCC that the trigger level has been reached.

If the monitor records a second exceedance of the ozone NAAQS during any consecutive three-year period, the newly-formed ozone advisory board will institute a voluntary program with area industry to reschedule, revise, or curtail activities for the ozone advisory days. This program will be developed and available for use within 30 days after notification by the TNRCC that this contingency measure will be required.

If Victoria County should violate the ozone NAAQS (4 exceedances during any consecutive three-year period) during the maintenance period, the TNRCC will require an additional voluntary measure to be implemented within one year of a violation of the ozone NAAQS. A complete description of these voluntary measures and their triggers can be found in the State's submittal. Although these voluntary measures do not qualify as contingency measures under section 175A, EPA is hereby approving them under section 110 for whatever strengthening effect they may have on the SIP.

Final Action

The EPA has evaluated the State's redesignation request for Victoria County, Texas, for consistency with the CAA, EPA regulations, and EPA policy. The EPA believes that, with the concurrent approval of the Texas RACT Catch-up and Victoria County Fix-up submission, the redesignation request and monitoring data demonstrate that Victoria County, Texas, has attained the ozone standard. In addition, the EPA has determined that, with the concurrent approval of the Texas RACT Catch-up and Victoria County Fix-up submission, the redesignation request meets the requirements and policy set forth in the General Preamble and policy memorandum discussed in this notice for area redesignations, and today is approving Texas' redesignation request for Victoria County.

The EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective May 8, 1995, unless adverse or critical comments are received by April 6, 1995. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received on this action or the Texas RACT Catch-up and Victoria County Fix-up action, the public is advised that this action will be effective May 8, 1995. Similarly, if adverse or critical comments are received on the Texas RACT Catch-up and Victoria County Fix-up action, the notice on that action will be converted to a proposal and those comments addressed in a subsequent final action. In such a case, the Victoria County redesignation direct final action will be converted to a proposal as well.

The EPA has reviewed this redesignation request for conformance with the provisions of the CAA and has determined that this action conforms to those requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, under 5 U.S.C. 605(b), the EPA may certify that the rule will not have a significant impact on a substantial number of small entities (see 46 FR 8709). Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 1995. Filing a petition for reconsideration of this final rule by the Administrator does not affect the finality of this rule for purposes of

judicial review; nor does it extend the time within which a petition for judicial review may be filed, or postpone the effectiveness of this rule. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

Nothing in this action shall be construed as permitting, allowing, or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements. I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA from basing its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2). The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Parts 52 and 81

Environmental protection, Air pollution control, Area designations, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, National parks, Reporting and recordkeeping, Ozone, Volatile organic compounds, and Wilderness areas.

Dated: February 22, 1995.

Jane N. Saginaw,

Regional Administrator (6A).

40 CFR parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2275 is amended by adding paragraph (e) to read as follows:

§ 52.2275 Control strategy and regulations: Ozone.

* * * * *

(e) Approval—The Texas Natural Resource Conservation Commission (TNRCC) submitted an ozone redesignation request and maintenance plan on July 27, 1994, requesting that the Victoria County ozone nonattainment area be redesignated to attainment for ozone. Both the redesignation request and maintenance plan were adopted by TNRCC in Commission Order No. 94–29 on July 27, 1994. The redesignation request and maintenance plan meet the redesignation requirements in section 107(d)(3)(E) of the Act as amended in 1990. The redesignation meets the Federal requirements of section 182(a)(1) of the Clean Air Act as a revision to the Texas Ozone State Implementation Plan for Victoria County. The EPA approved the request for redesignation to attainment with respect to ozone for Victoria County on May 8, 1995.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7871q.

2. In Section 81.344, the attainment status designation table for ozone is amended by revising the entry for Victoria County under ''Designated Area'' to read as follows:

§ 81.344 Texas.

* * * * *

TEXAS—OZONE

Designated area	Designation date	Classification	
		Type	Date type
Victoria Area, Victoria County.	May 8, 1995.	Attainment.	
*	*	*	* *

* * * * *

[FR Doc. 95–5347 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[MI21–04–6753, MI18–03–6754; FRL–5160–6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Michigan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On July 21, 1994 the USEPA published a proposal to approve the 1990 base year emission inventory, basic vehicle inspection and maintenance (I/M) and the redesignation to attainment and associated section 175A maintenance plan for the ozone National Ambient Air Quality Standard (NAAQS) for the seven-county Detroit-Ann Arbor, Michigan area as a State Implementation Plan (SIP) revisions. The 30-day comment period concluded on August 22, 1994. A total of 72 comment letters were received in response to the July 21, 1994 proposal, 62 favorable, 9 adverse and 1 request to extend the comment period. On September 8, 1994, however, the USEPA published a correction document and 15-day extension of the comment period as a result of the inadvertent omission of a number of lines from the July 21, 1994 proposal. The reopened comment period concluded on September 23, 1994. An additional 25 comment letters were received in response to the September 8, 1994, extension of public comment period regarding the July 21, 1994 proposal approval, 2 favorable, 22 adverse and 1 informational. This final rule summarizes all comments and USEPA's responses, and finalizes the approval of the 1990 base year emission inventory, and basic I/M, and the redesignation to attainment for ozone and associated section 175A maintenance plan for the Detroit-Ann Arbor area.

EFFECTIVE DATE: This action will be effective April 6, 1995.

ADDRESSES: Copies of the SIP revisions, public comments and USEPA's responses are available for inspection at the following address: (It is recommended that you telephone Jacqueline Nwia at (312) 886–6081 before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Jacqueline Nwia, Regulation Development Section (AT–18J), Air Toxics and Radiation Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 886–6081.

SUPPLEMENTARY INFORMATION:

I. Background Information

The 1990 base year emission inventory, basic I/M, and redesignation

request and maintenance plan discussed in this rule were submitted on January 5, 1993 (with revisions on November 15, 1993), November 15, 1994 and November 12, 1994, respectively, by the Michigan Department of Natural Resources (MDNR) for the Detroit-Ann Arbor moderate ozone nonattainment area. The Detroit-Ann Arbor area consists of Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne counties. On July 21, 1994, (59 FR 37190) the USEPA published a proposal to approve the 1990 base year emission inventory, basic I/M, and redesignation request and associated section 175A maintenance plan as revisions to the Michigan ozone SIP. On September 8, 1994 (59 FR 46479 and 46380), the USEPA published a correction notice and 15-day extension of the comment period as a result of the inadvertent omission of a number of lines from the July 21, 1994 proposal. Adverse comments were received regarding the proposed rule. The final rule contained in this Federal Register addresses the comments which were received during the public comment periods and announces USEPA's final action regarding the 1990 base year emission inventory, basic I/M, and redesignation and section 175A maintenance plan for the Detroit-Ann Arbor area. A more detailed discussion in response to each comment is contained in the USEPA's Technical Support Document (TSD), dated February 3, 1995 from Jacqueline Nwia to the Docket, entitled ''Response to Comments on the July 21, 1994 Proposal to Approve the 1990 Base Year Emission Inventory, Basic I/M, and Redesignation to Attainment for Ozone and Section 175A Maintenance Plan for the Detroit-Ann Arbor Area,'' which is available from the Region 5 office listed above.

II. Public Comments and USEPA Responses and Final Rulemaking Actions

Table of Contents

A. 1990 Base Year Emission Inventory
I. Public Comments and USEPA Response
II. Final Rulemaking Action
B. Inspection and Maintenance
I. Public Comments and USEPA Response
II. Final Rulemaking Action
C. Redesignation
I. Public Comments and USEPA Response
II. Final Rulemaking Action

A. 1990 Base Year Emission Inventory

I. Public Comments and USEPA Responses

The following discussion summarizes and responds to the comments received regarding the 1990 base year emission inventory.

Comment

Two commentors note an error in the 1990 base year emission inventory portion of the proposed action. One of these commentors notes that the total tons of volatile organic compounds (VOC) per summer weekday emitted from non-road mobile sources is listed as 531.03 for this source category. The correct number submitted by MDNR is 111.67.

USEPA Response

The USEPA acknowledges this error. The VOC emissions per summer weekday from the non-road mobile source category in the July 21, 1994 proposal (p. 37192) will be changed to reflect the number submitted by MDNR, 111.67. In addition, the total tons of VOC per summer weekday in the same table will be changed to 971.92. The Daily VOC Emissions table is changed and appears as follows:

DAILY VOC EMISSIONS FROM ALL SOURCES—TONS/SUMMER WEEKDAY

Ozone nonattainment area	Point source emissions	Area source emissions	On-road mobile source emissions	Non-road mobile source emmissions	Biogenic emissions	Total emissions
Detroit/Ann Arbor	167.08	252.27	327.00	111.67	113.90	971.92

II. Final Rulemaking Action

The USEPA approves the ozone emission inventory SIP submitted to the USEPA for the Detroit-Ann Arbor area as meeting the section 182(a)(1) requirements of the Clean Air Act (Act) for emission inventories.

B. Inspection and Maintenance

I. Public Comments and USEPA Responses

The following discussion summarizes and responds to the comments received regarding Inspection and Maintenance.

Comment

One commentor suggests that the USEPA's redesignation decision should be explicitly conditioned upon the requirement for the Michigan Department of Transportation to implement enhanced I/M 240 as a contingency measure. At a bare minimum, the maintenance plan should include the BAR 90 emissions test with visual anti-tampering check for all cars newer than 1975 with no Medicaid waiver.

USEPA Response

The Act requires that nonattainment areas classified as moderate adopt and submit as a SIP revision provisions for implementation of a basic I/M program. See sections 182(a)(2)(B)(i) and (b)(4). Since the Detroit-Ann Arbor area was classified as moderate nonattainment for ozone, the Act requires an I/M program that meets the basic I/M performance standard. The Detroit-Ann Arbor area has implemented an I/M program since 1986, as required by the pre-1990 Act. The area, therefore, must provide for upgrades to the current I/M program to the level of a basic I/M program. Under recent revisions to the national I/M rule (January 5, 1995, 60 FR 1735), however, areas that have requested redesignation to attainment, and are otherwise eligible to obtain approval of the request, may defer adoption and implementation of otherwise applicable requirements established in the originally promulgated I/M rule [1]. The State was required to submit and has submitted, as a contingency measure within the section 175A maintenance plan a commitment, legislative authority and an enforceable schedule for adoption and implementation of a basic I/M program. The contingency plan is described in detail in a subsequent USEPA response within this Federal Register.

Comment

One commentor requests that the USEPA delay approval of the redesignation request until Michigan's Joint Committee on Administrative Rules completes its review of the I/M legislation and the USEPA confirms that the essential elements listed at 59 FR

[1] I/M rule was promulgated on November 5, 1992, 57 FR 52950.

37193–94 regarding basic I/M, upon which redesignation approval relies, are still in place.

USEPA Response

The USEPA cannot delay approval of the redesignation, since Michigan has submitted the elements required and necessary to establish basic I/M as a contingency measure in the section 175A maintenance plan as provided for by the revisions to the national I/M rule. As presented in the July 21, 1994 proposal, the State submittal contains the essential elements listed at 59 FR 37193–94. Basic I/M, if implemented as a contingency measure, may be implemented in Wayne, Oakland, and Macomb counties and expanded to Washtenaw county.

Comment

One commentor is concerned that expanding upgraded [2] basic I/M to Washtenaw, St. Clair, Livingston and Monroe counties is subject to potential legislative veto after the need for contingency measures is triggered. The commentor states that because Michigan's legislature can unilaterally rescind the provisions to extend basic I/M programs to Washtenaw, St. Clair, Livingston and Monroe counties (1993 Mich. Pub. Act 232 § 8(2)(c) & (d)), Michigan's provisions do not appear to meet even the relaxed standards proposed in the June 28, 1994 revisions to the national I/M rule, 59 FR 33237, as being fully self-implementing and enforceable under all circumstances. Therefore, Michigan's basic I/M SIP is not complete or approvable. Consequently, the Detroit-Ann Arbor area is not eligible for redesignation.

USEPA Response

Sections 8(2)(c) and (d) of Michigan's Enrolled House Bill 5016 only apply if the redesignation request is disapproved and basic I/M must be implemented in the entire 7-county Detroit-Ann Arbor area (Wayne, Oakland, Macomb, Washtenaw, St. Clair, Livingston, and Monroe counties). The 45-day notification period in section 8(2)(d) of Michigan Enrolled House Bill 5016 is only applicable, as described in section 8(2)(c), if the redesignation is not approved and the State must implement basic I/M to meet the section 182(b) requirements. Clearly, the 45-day notification period is not applicable for implementation of I/M as a contingency measure. It is important to acknowledge that only notification to the legislature is required, and that no affirmative action on the part of the legislature is necessary to allow the program to be implemented. In addition, States at any time are able to amend existing rules and/or regulations for any required program as a matter of State law. This ability is not a reason for disapproval of any State submittal because such unilateral State action would not affect the Federal enforceability of the version of the State law or regulation the USEPA had approved into the SIP. The I/M legislation for the Detroit-Ann Arbor area satisfies the requirements of the revisions to the national I/M rule.

Sections 8(2)(a) and (b) of the legislation apply if the area is redesignated, and basic I/M is implemented as a contingency measure or as a condition for approval of the redesignation request. In particular, section 8(2)(a) provides that basic I/M may be implemented as a contingency measure in Wayne, Oakland and Macomb county and also expanded to Washtenaw county, if necessary. Together, the basic I/M submittal and redesignation request and the section 175A maintenance plan for the Detroit-Ann Arbor area (1) provide for the adoption of implementing regulations for a basic I/M program, meeting the national basic I/M requirements without further legislation, (2) provide for the implementation of basic I/M upgrades as a contingency measure in the maintenance plan upon redesignation, (3) contain, as a contingency measure within the maintenance plan, a commitment by the Governor to adopt regulations to implement I/M in response to a specified triggering event, and (4) contain a commitment including an enforceable schedule for adoption and implementation of a basic I/M program, as provided in the revisions to the national I/M rule. The revisions to the I/M rule do not, however, require that the basic I/M SIP be fully self-implementing. Consequently, contrary to the commentor's statement, the basic I/M SIP is complete and approvable and the Detroit-Ann Arbor area is eligible for redesignation.

Comment

One commentor states that the USEPA cannot redesignate the Detroit-Ann Arbor area because Michigan's basic I/M SIP submission does not even satisfy the requirements of the USEPA's unlawful policy. In particular, the commentor argues that since the legislature could at any time amend the legislative authority, the USEPA should require the State to submit adopted regulations with a basic I/M SIP. The commentor further argues that Michigan did not submit a sufficiently specific and enforceable schedule for adoption and implementation of a basic I/M program upon a specified triggering event. The commentor also notes that if the State has not adopted the regulations necessary to implement the contingency measure, such measure will not correct any violation promptly as required by the Act and USEPA guidance.

USEPA Response

The commentor states that the 45-day notice provided in the legislation prior to implementation of a required I/M program ensures that the legislature can repeal the legislative authority before it takes effect. This commentor's interpretation of Michigan's Enrolled House Bill 5016 is incorrect. The 45-day notification period in section 8(2)(d) of Michigan Enrolled House Bill 5016 is only applicable under the scenario described in section 8(2)(c), if the redesignation is not approved and the State must implement basic I/M to meet the section 182(b) requirements. Thus, as discussed earlier, the 45-day notification period is not applicable for implementation of I/M as a contingency measure.

The USEPA further responds that Michigan has submitted as part of the 175A maintenance plan an enforceable schedule for adoption and implementation of basic I/M as a contingency measure. Section 6.8.3 of the State's submittal indicates that adoption and implementation schedules for contingency measures would be consistent with those specified in the Act and any corresponding regulations and submitted as part of the technical urban airshed modeling (UAM) analysis. The I/M redesignation rule provides the relevant adoption and implementation schedules. If the Governor chooses I/M to be implemented as the contingency measure, under the schedule of the I/M redesignation rule Michigan incorporated by reference, the State would need to adopt I/M within one year of the trigger date. Michigan's submittal defined the trigger date as the

[2] The Act requires States to make changes to improve existing I/M programs or implement new ones. Section 182(a)(2)(B)(i) requires States to submit SIP revisions for any ozone nonattainment area which has been classified as marginal, pursuant to section 181(a) of the Act, with an existing I/M program that was part of a SIP prior to enactment of the Act or any area that was required by the Act, as amended in 1977, to have an I/M program, to bring the program up to the level required in pre-1990 USEPA guidance, or to what had been committed to previously in the SIP, whichever was more stringent. Areas classified as moderate and worse were also subject to this requirement to improve programs to this level. The Detroit-Ann Arbor area, a moderate ozone nonattainment area, had in effect an I/M program pursuant to the 1977 Act. The area, therefore, was required to improve its existing I/M program to meet the basic I/M program requirements.

date that the State certifies to the USEPA that the air quality data are quality assured, which will be no later than 30 days after an ambient air quality violation is monitored. Pursuant to the I/M redesignation rule, the trigger date is the date no later than when the USEPA notifies the State of a violation. As long as the trigger date as defined by Michigan occurs prior to the date the USEPA notifies the State of a violation, Michigan's timeframe for implementing I/M as a contingency measure is consistent with the I/M redesignation rule. Because it often takes several months for the USEPA to obtain the data and confirm a violation, it is unlikely that the trigger date as defined by Michigan will be later than that defined in the I/M redesignation rule. However, if the USEPA does notify the State of a violation prior to the State certifying to the USEPA that the ambient air quality data assure a violation, then the trigger date will be the date of the USEPA notification to the State, consistent with the I/M redesignation rule. The basic I/M program, if selected as a contingency measure, must be implemented within 24 months of the trigger date, or 12 months after the adoption of implementing regulations. This schedule is consistent with the I/M redesignation rule, which is the applicable regulation for purposes of establishing an adoption and implementation schedule. This schedule is specific and enforceable since it will be incorporated into the SIP as part of the section 175A maintenance plan. The section 175A(d) requirement for contingency provisions is that they must promptly correct a violation of the NAAQS. The USEPA believes that the schedule provided for implementation of a basic I/M program within the Detroit-Ann Arbor area's section 175A maintenance plan is sufficient to address this requirement in light of the logistics of adopting and implementing a basic I/M program.

The commentor also indicated that the Michigan submittal does not satisfy the USEPA's requirement of a ''specified and enforceable schedule'' because it does not include a timetable of steps necessary to get the required regulations adopted. As discussed above, because Michigan incorporated by reference the timetable of the I/M redesignation rule, adoption of I/M regulations is specified to occur within one year of the trigger date. The only other interim step necessary to get the required regulations adopted is the proposal of draft regulations. Although the Michigan submittal did not specify a date for the proposal, the State's commitment to a date for promulgation of the final rule implies that the draft regulations will be proposed on a date no later than that necessary to provide for notice and comment and a hearing on the draft regulations. Because Michigan's submittal specified a timetable to get the final regulations adopted, the Michigan submittal has met the requirement to provide a specified and enforceable schedule.

A commentor also suggested that a determination that actual emissions from mobile sources actually exceed those predicted in the emission inventories should also be included as a triggering event. This is neither a requirement of the Act nor of USEPA policy, although it has been suggested as a possible triggering event in guidance, and States are encouraged to use it.

Comment

One commentor challenges the adequacy of Michigan's demonstration that its I/M program did not contribute to Southeast Michigan's attainment, and urged reconsideration of the proposed elimination of the program after 1995.

USEPA Response

Michigan did not claim that the current I/M program did not contribute to the Detroit-Ann Arbor's attainment, nor did it claim credit for the emission reductions achieved as a result of the program within the attainment demonstration. Furthermore, neither the State nor the USEPA has proposed or suggested that the current I/M program be eliminated after 1995. In fact, the State must continue to implement its current I/M program as well as all other SIP control measures that were contained in the SIP prior to the submittal of a complete redesignation request. The September Shapiro[3] memorandum reviews and reinforces the USEPA's policy on SIP relaxations, particularly in the context of redesignation. The memorandum notes that the USEPA's general policy is that a State may not relax the adopted and implemented SIP for an area upon the area's redesignation to attainment unless an appropriate demonstration, based on computer modeling, is approved by the USEPA. Existing control strategies must continue to be implemented in order to maintain the standard. Although section 175A recognizes that SIP measures may be moved to the contingency plan upon redesignation, such a SIP revision may be approved only if the State can adequately demonstrate that such action will not interfere with maintenance of the standard. A demonstration for an area redesignated to attainment for ozone would entail submittal of an attainment modeling demonstration with the USEPA's current Guideline on Air Quality Models, showing that the control measure is not needed to maintain the ozone NAAQS. Also, see memorandum from Gerald A. Emison, April 6, 1987, entitled Ozone Redesignation Policy.

Comment

One commentor states that the USEPA's policy of approving a basic I/M SIP revision that does not include adopted regulations is unlawful.

USEPA Response

The USEPA's specific response to these comments is published in the USEPA's final rulemaking on the revisions to the national I/M rule. See January 5, 1995, 60 FR 1735. In that rulemaking, the commentor also submitted similar remarks and the USEPA's responses to those comments appear in the docket for that rulemaking. It is appropriate for the USEPA to rely on the final I/M rule revisions in taking today's final action, and this rulemaking is not the appropriate forum in which to challenge the validity of the I/M rule revisions.

II. Final Rulemaking Action

The USEPA approves the basic I/M program submitted to the USEPA for the Detroit-Ann Arbor area as meeting the revised national I/M rule (January 5, 1995, 60 FR 1735) for areas redesignated from nonattainment to attainment, consequently satisfying the requirements of section 182(a)(2)(B)(i) of the Act.

C. Redesignation

I. Public Comments and USEPA Responses

The following discussion summarizes and responds to the comments received regarding the redesignation of the Detroit-Ann Arbor area to attainment for ozone.

Comment

One commentor notes that if an expeditious review and approval of MDNR's request had occurred prior to the 1994 ozone season, then any ozone violation thereafter would have prompted the implementation of a contingency measure from the maintenance plan to correct the air quality problem.

[3] September 17, 1993 memorandum from Michael H. Shapiro, entitled SIP Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide NAAQS on or after November 15, 1992.

USEPA Response

The Act authorizes the USEPA up to 18 months from submittal to act on a State's request to redesignate. See section 107(d)(3)(D). The process for redesignating areas to attainment is a complex one which is designed not only to identify areas which currently have clean air, but also to assure that clean air will be maintained in the future. There are many statutory requirements which must be satisfied before the redesignation request can be processed, including review and approval of all revisions to the SIP for programs whose deadlines came due prior to submittal of the redesignation request to the USEPA. See September Calcagni [4] memorandum and September Shapiro. Before the USEPA could finally redesignate the area to attainment, all remaining items had to be finally approved, including: (1) the State regulations for Reasonable Available Control Technology (RACT) for VOC,[5] (2) the section 182(f) oxides of nitrogen (NO_X) RACT exemption petition, and 3) revisions to the national motor vehicle I/M rule. The USEPA could not redesignate the Detroit-Ann Arbor area until these actions were finalized. Because all these actions were finalized, the Federal action on the redesignation can be completed. Furthermore, if a violation had occurred during the pendency of the USEPA's review of the ozone redesignation request, the USEPA could not approve the request since the area would not have remained in attainment. As a consequence, further control measures would have been required under the Act.

In any case, the commentor's concern is moot, since no violations of the ozone NAAQS occurred during the 1994 ozone season.

Comment

One commentor suggests that redesignation requests should be Table I decisions to ensure national consistency.

USEPA Response

An October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, revised the SIP tables initially published in the Federal Register on January 19, 1989 (54 FR 2214). The USEPA revised these tables in conjunction with the Office of Management and Budget (OMB). The revisions classified all redesignation, except those for total suspended particulate, as Table 2 actions. These actions require the Regional Administrator's decisions and concurrence, but provide a 40-day opportunity for Headquarters review before concurrence by the Regional Administrator. The 40-day Headquarters review is intended to function as a check for national consistency and the USEPA believes that this system provides adequate assurances of consistency.

Comment

One commentor notes that the USEPA's proposed redesignation relies on data from 1993 which was not included in Michigan's November 12, 1993 request, and was not subject to public comment. Further, there is an inconsistency between the years offered by Michigan as a basis for redesignation 1990–92 and the years selected by the USEPA as the basis for considering and actually proposing the redesignation (1991–1993). Therefore, Michigan's redesignation request was not ''complete'' on November 12, 1993.

USEPA Response

As stated in the proposed rulemaking, Michigan submitted ambient data for 1990–1992 in its November 12, 1993 submission, but did not submit 1993 ozone data because it was not completely quality-assured at the time the request was being developed. Under the guidance of the USEPA, the State submitted the 3 most recent consecutive years of complete air monitoring data (1990–1992), with the understanding that shortly thereafter, the 1993 ozone season data would be available in AIRS for the USEPA to review. The 1993 ozone data was considered by the USEPA and was subject to public comment as a result of the July 21, 1994 proposed rulemaking. Regardless of which years of data are used, 1990–1992 or 1991–1993, Michigan has demonstrated attainment of the ozone NAAQS in the Detroit-Ann Arbor area by providing monitoring data with no violations. Completeness of a SIP submittal is based on the criteria established in 40 CFR part 51, appendix V. Using these, the USEPA found the November 12, 1993 submittal complete in a letter to Michigan dated January 7, 1994. The use of 1993 ozone season data that was not completely quality-assured at the time of the November 12, 1993 submission does not alter the conclusion that the submission, which the USEPA found complete was based on 3 consecutive years of air monitoring data.

Comment

One commentator alleges that USEPA's notice of proposed approval of the redesignation is a product of undue haste since the action was incomplete and failed to give adequate notice of plans for verification of continued attainment. The action skips portions of paragraph (b) Demonstration of Maintenance and paragraph (C) Verification of Continued Attainment on pages 37198–37199. In addition, three paragraphs on page 37198 duplicate text on page 37197.

USEPA Response

The omission of paragraph (B) and (C) and duplicated text is acknowledged. Unfortunately, the Office of Federal Register, inadvertently excluded a number of lines from these two sections of the action. For this reason, the comment period on the July 21, 1994, redesignation was reopened on September 8, 1994, (59 FR 46479 and 46380) for 15 days in order to provide the public an opportunity to appropriately comment on it.

Comment

One commentor requested additional time for reviewing and providing comments on the proposed redesignation due to insufficient time to comment on such a complex proposal.

USEPA Response

As discussed above, the comment period was extended for the redesignation and section 175A maintenance plan in order to give the public sufficient time to review and to submit comments. The correction document and extension of public comment period action were published on September 8, 1994. The USEPA does not believe that any additional extension of time is necessary as an adequate comment period has already been provided.

Comment

One commentor requested a formal USEPA public hearing on the redesignation.

USEPA Response

Under the Act, States can submit proposed implementation plans (and revisions) to the USEPA for approval only after they have afforded interested parties ''reasonable notice and public hearing * * *.'' See Section 110(a)(1) and (a)(2). The State held a public hearing on the proposed redesignation to attainment for ozone and revision to

[4] September 4, 1992 memorandum from John Calcagni, entitled *Procedures for Processing Requests to Redesignate Areas to Attainment.*

[5] The VOC RACT rules were approved in a final rulemaking published on September 7, 1994 in the Federal Register (59 FR 46213 and 46182).

the Michigan SIP, i.e., maintenance plan, on October 22, 1993. There are no provisions, however, requiring the USEPA to hold its own hearings. The USEPA is required to provide the opportunity for public comment. The USEPA announced opportunities on July 21, 1994 and September 8, 1994 for the public to submit comments. The USEPA believes those opportunities represent a more than ample opportunity for public input and comment on this redesignation.

Comment

One commentor states that the air quality in the area has been poor and has gotten worse in the past 10 years. Offensive odors are apparent when it is slightly overcast or during the night when a local incinerator is burning.

USEPA Response

This redesignation pertains to solely to ozone, and would not affect offensive odors from an incinerator, regardless of whether these odors are evident during slightly overcast skies or at night. Redesignating the area to attainment for ozone would neither solve nor contribute to the problem. The incinerator must continue to operate existing control equipment in compliance with its own applicable permits, rules and regulations. Ambient monitoring data from 1990 through 1994 demonstrates that the area is attaining the ozone NAAQS. This evidences that the air quality has improved at least since the period 1987–1989, the years of air quality data which were used to designate the area nonattainment for ozone.

Comment

A number of commentors urge the USEPA to reconsider the NAAQS for ground level ozone. One commentor notes that Canada's ozone standard' is 82 parts per billion (ppb) while the United States' (U.S.) is 125 ppb.[6] This disparity in limits continues to be debated in the U.S. courts with the American Lung Association and others, who contend that the U.S. must lower its limit to 82 ppb, or lower, for health based reasons. Another commentor states that the current ozone NAAQS is not protective of the public health, and should be made more stringent to comply with the Congressional mandate to protect public health with an ''adequate margin of safety.''

USEPA Response

The USEPA is currently in the process of reevaluating the ozone NAAQS and expects to make a final decision in mid-1997. Until any change is made, however, the USEPA is bound to implement the provisions of the Act as they relate to the current standard, including those relating to designations and redesignation.

Comment

One commentor notes that MDNR has taken the position that the measured concentration must exceed 125 ppb before a legally actionable exceedance that contributes to a 3 year running average on the number of days with exceedances is triggered. As a result, MDNR has not included as excursions days with maximum numbers that actually do exceed the published standard of 0.12 ppm.

USEPA Response

Published guidance (Guideline for the Interpretation of Ozone Air Quality Standards, January 1979, EPA–450/4–79–003), which is part of the ozone standard by reference in 40 CFR part 50, appendix H, notes that the stated level of the standard is determined by defining the number of significant figures to be used in comparison with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (0.005 rounds up), and therefore, 0.125 ppm is the smallest three-decimal concentration value in excess of the level of the standard. Therefore, MDNR is following USEPA national guidance.

Comment

The commentor objects to the USEPA's proposed disapproval of the redesignation request if a monitored violation of the ozone NAAQS occurs prior to final USEPA action on the redesignation. The commentor notes further that since the area has reached attainment of the NAAQS and has requested redesignation, a requirement to implement contingency measures to correct the problem would be sound policy in the event of a violation during 1994.

USEPA Response

Section 107(d)(3)(E) of the Act establishes five criteria which must be satisfied in order for the USEPA to redesignate an area from nonattainment to attainment. One of these criteria is that the Administrator determine that the area has attained the NAAQS. See section 107(d)(3)(E)(i). This requirement clearly prohibits the Administrator from redesignating areas that have not attained the NAAQS. If a violation had occurred prior to the USEPA's final action, the Detroit-Ann Arbor area would no longer have been in attainment and the USEPA could not redesignate the area to attainment. Furthermore, only a final rulemaking action can change an area's designation under 40 CFR part 81. Despite the July 21, 1994 proposal, the area must continue to meet this criterion until final rulemaking is published. As a result, the USEPA must consider air quality data that is collected until the date of final rulemaking and revision of the area's nonattainment status under 40 CFR part 81.

In addition, the USEPA's September Calcagni memorandum, page 5, states that Regions should advise States of the practical planning consequences if the USEPA disapproves the redesignation request or if the request is invalidated because of violations recorded during USEPA's review. This policy has been followed in disapproving the Richmond, Virginia redesignation, which was disapproved due to violations of the ozone NAAQS occurring prior to final action on a proposed approval of the redesignation (May 3, 1994, 59 FR 22757).

With respect to a requirement to implement contingency measures in the event of a violation prior to final approval of a redesignation, the USEPA notes that the Detroit-Ann Arbor area, like any other nonattainment area, is subject to the contingency measure requirements of section 172(c)(9) until the area is redesignated to attainment.

In any case, the commentor's concern is moot, since no violations of the ozone NAAQS occurred during the 1994 ozone season.

Comment

Several commentors request that the Detroit-Ann Arbor area be denied redesignation to attainment until it is clearly shown, using 1994 data, that the area is in attainment. Other commentors noted that although the Detroit-Ann Arbor area experienced only one ozone exceedance from 1991 to 1993 or 1990 to 1992, it experienced at least three ozone exceedances in 1994 alone. Commentors provided specific monitored ozone values recorded at Detroit-Ann Arbor area monitors during the 1994 ozone season. The following ozone concentrations from Detroit-Ann Arbor area monitors were provided: 133 ppb at the Algonac monitor, 142 ppb at the New Haven monitor, 145 ppb at the Warren monitor, 178 ppb at the Port Huron monitor, and 127 ppb at the Oak Park monitor.

[6] This is equivalent to 0.125 parts per million (ppm). This is the reference used by the commentor, presumably, to illustrate the difference between the Canadian objective and U.S. standard.

USEPA Response

As discussed above, the USEPA could not approve the redesignation if a violation occurred during the USEPA's review of the request. Consequently, while the July 21, 1994 action proposed to approve the redesignation, it also proposed, in the alternative, to disapprove the redesignation if violations of the ozone NAAQS occur before the USEPA took final action on the redesignation.

Title 40 CFR part 50.9 establishes the ozone NAAQS, measured according to appendix D, as 0.12 ppm (235 micrograms per cubic meter (ug/m3)). The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm (235 ug/m3) is equal to or less than 1 as determined by 40 CFR part 50 appendix H. Further discussion of these procedures and associated examples are contained in the document Guideline for Interpretation of Ozone Air Quality Standards, January 1979, EPA–450/4–79–003. Simply, the number of exceedances at a monitoring site would be recorded for each calendar year and then averaged over the past 3 calendar years to determine if this average is less than or equal to 1. The net result is that each monitor in an area is allowed to record 3.0 expected exceedances in a 3 year period. More than 3.0 expected exceedances in a 3-year period would constitute a violation of the ozone NAAQS. As explained in the July 21, 1994 proposed rulemaking (59 FR 37190), the Detroit-Ann Arbor area has attained the ozone NAAQS during the 1990–1992 and 1991–1993 periods. The 1994 ozone season has concluded and while there have been some recorded ozone exceedances in the Detroit-Ann Arbor area, they do not (in consideration with 1992 and 1993 data) constitute a violation of the ozone standard. Consequently, the Detroit-Ann Arbor area continues to attain the ozone standard at this time. The USEPA has considered all air quality data collected prior to final rulemaking on the redesignation request.

Comment

One commentor questions whether actual attainment and maintenance of the standard was achieved and suggests that paper demonstrations of attainment and maintenance should *not* be given more weight in decisionmaking when compared to actual adverse air quality monitoring data showing unhealthy concentrations of ozone, or data that is marginally so.

USEPA Response

The USEPA notes that it has not given ''paper'' (or more properly, analytical) demonstrations of attainment more weight than ambient monitoring data. As discussed above, the ambient air quality monitoring data for the Detroit-Ann Arbor area demonstrates attainment of the ozone NAAQS over the time periods of 1990–1992, 1991–1993, and 1992–1994. Furthermore, continued maintenance of the ozone NAAQS will be determined by continued ambient monitoring.

Comment

One commentor asserted that the USEPA cannot redesignate the Detroit-Ann Arbor area because the USEPA must determine the relevant applicable requirements at the time of approval of an area's redesignation request and the State must satisfy them. According to the commentor, section 175A(c) of the Act requires that all requirements of subpart D remain in force until an area is redesignated. The commentor argued that the USEPA's interpretation of section 107(d)(3)(E), pursuant to which the USEPA determines whether an area seeking redesignation has met the Act requirements applicable prior to or at the time of the submission of a redesignation request, is inconsistent with section 175A(c). Specifically, the commentor argued that the Act prohibits the redesignation of the Detroit-Ann Arbor area because the area has not submitted by November 15, 1993, an approvable SIP revision providing for 15 percent VOC reductions, nor satisfied the basic I/M and New Source Review (NSR) requirements that came due prior to the submission of the redesignation request. Moreover, the commentor claimed that the USEPA's interpretation encourages States to delay implementation of the Act since delay in implementing requirements that come due after the submission of a redesignation request would not affect the approvability of the request.

USEPA Response

The USEPA has interpreted section 107(d)(3)(E) to mean that the section 110 and part D provisions that are required to be fully approved in order for a redesignation to be approved are those which came due prior to or at the time of the submittal of a complete redesignation request. At the same time, however, the USEPA has maintained that States continue to be statutorily obligated to meet any SIP requirements that come due after the submission of the redesignation request before the USEPA takes final action to redesignate an area. As a consequence, the USEPA has also followed a policy of issuing findings of failure to submit if a State that has submitted a redesignation request fails to comply with a SIP submittal requirement that comes due after the submission of a redesignation request. See September and October Calcagni[7] memorandums, September Shapiro memorandum, and the memorandum dated January 7, 1994, from John S. Seitz to Regional Air Division Directors, entitled ''Procedures for SIP Elements Due November 15, 1993.'' The USEPA believes that its approach is both reasonable and harmonizes the pertinent provisions of the Act in a workable manner that is consistent with the language and intent of the Act. Moreover, the USEPA believes that the interpretation advocated by the commentor would be unworkable and make it virtually impossible for areas to be redesignated to attainment.

The pertinent provisions of the Act are as follows. Section 107(d)(3)(E)(v) of the Act provides that a State must have met ''all requirements applicable to the area under section 110 and part D'' in order to be redesignated. Furthermore, section 107(d)(3)(E)(ii) provides that the USEPA must have fully approved the SIP for the area seeking redesignation. Finally, section 175A(c) provides that the requirements of part D remain in force and effect for an area until such time as it is redesignated.

The USEPA believes that it is both logical and reasonable to interpret section 107(d)(3)(E)(ii) and (v) so that, for purposes of the evaluation of a redesignation request, the only requirements that are ''applicable'' and for which the SIP must be fully approved before the USEPA may approve the redesignation request are those that came due prior to or at the time of the submission of a complete redesignation request.

The first reason that it is reasonable to determine the approvability of a redesignation request on the basis of compliance with only Act requirements applicable prior to or at the time of the submission of the request is that holding the State to a continuing obligation to comply with subsequent requirements coming due after the submission of the request for purposes of the redesignation would make it impossible in many instances for the USEPA to act on redesignation requests in accordance with the 18-month deadline mandated

[7] October 28, 1992 memorandum from John Calcagni entitled *SIP Actions Submitted in Response to Clean Air Act Deadlines.*

by Congress for such actions in section 107(d)(3)(C). This is because each Act requirement coming due during the pendency of the USEPA's review of a redesignation request carries with it a necessary implication that the USEPA must also fully approve the SIP submission made to satisfy that requirements in order for the area to be redesignated. Otherwise, the area would fail to satisfy the redesignation requirement of section 107(d)(3)(E)(ii) to have a fully-approved SIP. As Congress limited the USEPA to an 18-month period to take final action on complete redesignation requests, Congress could not have intended that, for those requests to be approved, States make additional SIP submissions that would require the USEPA to undertake action that would necessarily delay action on the redesignation request beyond the 18-month time frame. (The delay would occur due to the time needed for the USEPA to take action regarding the determinations as to whether to find those SIP submissions complete and to approve or disapprove them. Congress accorded the USEPA up to 18 months from the submission of a SIP revision to take such action. *See* section 110(k).)

Another reason that the USEPA's interpretation is reasonable is that the fundamental premise for a request to redesignate a nonattainment area to attainment is that the area has attained the relevant NAAQS. Thus, an area for which a redesignation request has been submitted should have already attained the NAAQS as a result of the satisfaction of Act requirements that came due prior to the submission of the request, and it is reasonable to view the only requirements applicable for purposes of evaluating the redesignation request as those that had already come due since those requirements were the ones that presumably led to attainment of the NAAQS—which is the primary purpose of title I of the Act. To require that a State continue to satisfy requirements coming due during the pendency of the USEPA's review of a complete redesignation request in order to have the redesignation approved would require the State to do more than was needed to attain the NAAQS.

The USEPA's interpretation by no means eliminates the obligation of States to comply with requirements coming due after the submission of a redesignation request. Rather, it simply means that areas may be redesignated even though the State may not have complied with those requirements. As the USEPA's policy makes clear, in accordance with the requirements of section 175A(c), the statutory obligation of the States to fulfill those requirements remains in effect until the USEPA takes final action to redesignate an area to attainment. Thus, the USEPA's policy is to issue findings of failure to submit if a State fails to submit a SIP revision to fulfill such a requirement, thereby triggering a clock that will result in the imposition of mandatory sanctions, under section 179 of the Act, 18 months after the issuance of the finding unless the USEPA approves the redesignation request prior to the expiration of the sanctions clock.

Thus, if a State chooses not to submit a complete and approvable SIP revision to comply with a requirement that comes due after the submission of a redesignation request, it runs the risk it will be sanctioned in the event that the USEPA does not approve the redesignation request. For example, in the case of the Detroit-Ann Arbor area, on January 21, 1994, the USEPA started the 18-month sanctions clock for the 15 percent reduction plan required by section 182(b)(1) to be submitted by November 15, 1993 after the State had submitted its complete redesignation request for the Detroit-Ann Arbor area, by finding the area's 15 percent plan incomplete. If the USEPA were not now approving the redesignation request, the sanctions clock would continue to run and the State would continue to be subject to the risk that sanctions would be imposed. Notably, a State seeking redesignation for an area is in the same position as to the initiation of sanctions clocks for the failure to make a submittal as any other State. Thus, if Michigan had *not* submitted a redesignation request for the Detroit-Ann Arbor area and nevertheless had failed to submit a complete 15 percent plan by November 15, 1993, it would also have been subject to a finding of failure to submit and the consequent commencement of a sanctions clock.

For this reason, the USEPA disagrees with the comment's contention that the USEPA's interpretation regarding the requirements applicable for purposes of evaluating redesignation requests encourages States to delay implementation of the Act. States seeking redesignation for areas are subject to sanctions for failure to submit SIP revisions in accordance with the Act's requirements in the same way that States not seeking redesignation are. To the extent that the USEPA's interpretation results in States not adopting measures they might otherwise have had to, such a result is a consequence of the only workable interpretation of the provisions of section 107 concerning applicable requirements and that result does not justify rejecting that interpretation. This is particularly so since the only areas that benefit from this interpretation are those that have attained the ambient air quality standards and have demonstrated that they will continue to maintain them in the future.

Thus, the USEPA believes it may approve the Detroit-Ann Arbor redesignation request notwithstanding the lack of a fully approved 15 percent plan. Such action is consistent with the USEPA's national policy and is permissible under the Act. (The commentor's contentions regarding the basic I/M plans and NSR review program are dealt with as part of the responses to other comments on those programs elsewhere in this document.)

Comment

One commentor stated that the requirement of both general and transportation conformity is an important element of Michigan's attainment SIP and that the USEPA's notice has not addressed conformity in the context of the redesignation. Adverse consequences will stem from failure to continue to require conformity analyses and measures. Another commentor states that redesignation does not excuse the State from submitting a conformity SIP revision for the Detroit-Ann Arbor area or from including a motor vehicle emission budget for NO_X in the area's maintenance plan. The commentor further states that the NO_X waiver available under section 182(f), has no connection with the conformity requirements for transportation plans and programs contained in section 176(c)(2)(A) and 176(c)(1)(B).

USEPA Response

The July 21, 1994 proposal (59 FR 37190) did state that the November 24, 1993 (59 FR 62188) transportation and November 30, 1993 (59 FR 63214) general conformity rules require States to adopt transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under section 175A of the Act. The proposal further explained that, although conformity is applicable in these areas, since the deadline for submittal had not come due for these rules at the time Michigan submitted a redesignation request, the approval of the redesignation is not contingent on these submittals to comply with section 107(d)(3)(E)(v). The Detroit-Ann Arbor area must comply with the section 176 conformity regulations as required by the conformity rules and the Conformity General Preamble (June 17, 1994, 59 FR

31238)[8]. According to these rules, conformity applies to nonattainment areas as well as maintenance areas. Once redesignated, the Detroit-Ann Arbor area will be a maintenance area which will be required to conduct emission analyses to determine that the VOC and NO_X emissions remain below the motor vehicle emission budget established in the maintenance plan. Transportation and general conformity apply to maintenance areas and therefore, the Detroit-Ann Arbor area must comply with these rules. The Conformity General Preamble to the conformity regulations further clarifies this issue, particularly as it pertains to areas requesting and obtaining a section 182(f) NO_X exemption. According to the conformity rules and preamble, the Detroit-Ann Arbor area's conformity test will be to remain within the VOC and NO_X budgets established in the section 175A maintenance plan. Michigan has established a motor vehicle emission budget for NO_X in the area's maintenance plan.

The commentor's suggestion that the section 182(f) exemption has no connection to the conformity requirements for transportation plans and programs contained in section 176(c)(2)(A) and 176(c)(1)(B) was made in response to the August 10, 1994 proposal to approve the section 182(f) NO_X exemption for the Detroit-Ann Arbor area. The USEPA's response is, therefore, articulated in the final rulemaking approving the section 182(f) NO_X exemption petition for the Detroit-Ann Arbor area published elsewhere in this Federal Register.

Comment

One commentor states that areas are requesting exemptions from the NO_X control measures based on incomplete modeling studies (i.e. Lake Michigan and Southeast Michigan Ozone Studies) which do not accurately predict the relative contribution of mobile source emissions because the mobile source emissions inventory understates its contribution to ozone production. Furthermore, given the uncertainty of mobile source NO_X contributions to ozone and the inaccuracy of mobile source inventories, it is inappropriate to remove from the SIP any NO_X or VOC conformity analysis.

USEPA Response

Exemption from the section 182(f) NO_X requirements is provided for in sections 182(f)(1)(a) and 182(f)(3) of the Act. Michigan submitted such an exemption request on November 12, 1993 for the Detroit-Ann Arbor area based on 3 consecutive years of clean air quality monitoring data, not on a modeling study or analysis. In addition, approval of an exemption based on monitoring data will be contingent on the area's maintenance of the ozone NAAQS. As noted previously, a section 182(f) NO_X exemption will not exempt areas from compliance with the conformity regulations. The USEPA refers the commentor to the final rulemaking approving the section 182(f) NO_X exemption petition for the Detroit-Ann Arbor area published elsewhere in this Federal Register.

Comment

One commentor notes that there is no reasonable or adequate basis for eliminating Michigan's existing NSR program from the current SIP. Another commentor states that the USEPA cannot redesignate the Detroit-Ann Arbor area because Michigan has not met the NSR requirements under section 182(b)(5).

USEPA Response

The USEPA believes that the Detroit-Ann Arbor area may be redesignated to attainment notwithstanding the lack of a fully-approved NSR program meeting the requirements of the 1990 Act amendments and the absence of such an NSR program from the contingency plan. This view, while a departure from past policy, has been set forth by the USEPA as its new policy in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment.

The USEPA believes that its decision not to insist on a fully-approved NSR program as a pre-requisite to redesignation is justifiable as an exercise of the Agency's general authority to establish de minimis exceptions to statutory requirements. See *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 360–61 (D.C. Cir. 1979). Under *Alabama Power Co.* v. *Costle*, the USEPA has the authority to establish de minimis exceptions to statutory requirements where the application of the statutory requirements would be of trivial or no value environmentally.

In this context, the issue presented is whether the USEPA has the authority to establish an exception to the requirements of section 107(d)(3)(E) that the USEPA have fully-approved a SIP meeting all of the requirements applicable to the area under section 110 and part D of title I of the Act. Plainly, the NSR provisions of section 110 and part D are requirements that were applicable to the Michigan area seeking redesignation at the time of the submission of the request for redesignation. Thus, on its face, section 107(d)(3)(E) would seem to require that the State have submitted and the USEPA have fully-approved a part D NSR program meeting the requirements of the Act before the areas could be redesignated to attainment.

Under the USEPA's de minimis authority, however, it may establish an exception to an otherwise plain statutory requirement if its fulfillment would be of little or no environmental value. In this context, it is necessary to determine what would be achieved by insisting that there be a fully-approved part D NSR program in place prior to the redesignation of the Detroit-Ann Arbor area. For the following reasons, the USEPA believes that requiring the adoption and full-approval of a part D NSR program prior to redesignation would not be of significant environmental value in this case.

Michigan has demonstrated that maintenance of the ozone NAAQS will occur even if the emission reductions expected to result from the part D NSR program do not occur. The emission projections made by Michigan to demonstrate maintenance of the NAAQS considered growth in point source emissions (along with growth for other source categories) and were premised on the assumption that the Prevention of Significant Deterioration (PSD) program, rather than the part D NSR, would be in effect, during the maintenance period. Under NSR, significant point source emissions growth would not occur. Michigan assumed that NSR would not apply after redesignation to attainment, and therefore, assumed source growth factors based on projected growth in the economy and in the area's population. (It should be noted that the growth factors assumed may be overestimates under PSD, which would restrain source growth through the application of best available control techniques.) Thus, contrary to the assertion of the commentor, Michigan has demonstrated that there is no need to retain the part D NSR as an operative program in the SIP during the maintenance period in order to provide for continued maintenance of the NAAQS. (If this demonstration had not been made, NSR would have had to have been retained in the SIP as an operative program since it would have been needed to maintain the ozone standard.)

[8] On November 18, 1994 and November 29, 1994, Michigan submitted SIP revisions to comply with the Transportation and General conformity rules.

The other purpose that requiring the full-approval of a part D NSR program might serve would be to ensure that NSR would become a contingency provision in the maintenance plan required for these areas by sections 107(d)(3)(E)(iv) and 175A(d). These provisions require that, for an area to be redesignated to attainment, it must receive full approval of a maintenance plan containing ''such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area. Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the SIP for the area before redesignation of the area as an attainment area.'' Based on this language, it is apparent that whether an approved NSR program must be included as a contingency provision depends on whether it is a ''measure'' for the control of the pertinent air pollutants.

As the USEPA noted in the proposal regarding this redesignation request, the term ''measure'' is not defined in section 175A(d) and Congress utilized that term differently in different provisions of the Act with respect to the PSD and NSR permitting programs. For example, in section 110(a)(2)(A), Congress required that SIPs to include ''enforceable emission limitations and other control measures, means, or techniques* * *as may be necessary or appropriate to meet the applicable requirements of the Act.'' In section 110(a)(2)(C), Congress required that SIPs include ''a program to provide for the enforcement of the *measures* described in subparagraph (A), *and* regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required in parts C and D.'' (Emphasis added.) If the term measures as used in section 110(a)(2) (A) and (C) had been intended to include PSD and NSR there would have been no point to requiring that SIPs include both measures *and* preconstruction review under parts C and D (PSD or NSR). Unless ''measures'' referred to something other than preconstruction review under parts C and D, the reference to preconstruction review programs in section 110(a)(2)(C) would be rendered mere surplusage. Thus, in section 110(a)(2) (A) and (C), it is apparent that Congress distinguished ''measures'' from preconstruction review. On the other hand, in other provisions of the Act, such as section 161, Congress appeared to include PSD within the scope of the term ''measures.''

The USEPA believes that the fact that Congress used the undefined term ''measure'' differently in different sections of the Act is germane. This indicates that the term is susceptible to more than one interpretation and that the USEPA has the discretion to interpret it in a reasonable manner in the context of section 175A. Inasmuch as Congress itself has used the term in a manner that excluded PSD and NSR from its scope, the USEPA believes it is reasonable to interpret ''measure,'' as used in section 175A(d), not to include NSR. That this is a reasonable interpretation is further supported by the fact that PSD, a program that is the corollary of part D NSR for attainment areas, goes into effect in lieu of part D NSR.[9] This distinguishes NSR from other required programs under the Act, such as inspection and maintenance and RACT programs, which have no corollary for attainment areas. Moreover, the USEPA believes that those other required programs are clearly within the scope of the term ''measure.''[10]

The USEPA's logic in treating part D NSR in this manner does not mean that other applicable part D requirements, including those that have been previously met and previously relied upon in demonstrating attainment, could be eliminated without an analysis demonstrating that maintenance would be protected. As noted above, Michigan has demonstrated that maintenance would be protected with PSD in effect, rather than part D NSR. Thus, the USEPA is not permitting part D NSR to be removed without a demonstration that maintenance of the standard will be achieved. Moreover, the USEPA has not amended its policy with respect to the conversion of other SIP elements to contingency provisions, which is that they may be converted to contingency provisions only upon a showing that maintenance will be achieved without them being in effect. Finally, as noted above, the USEPA believes that the NSR requirement differs from other requirements, and does not believe that the rationale for the NSR exception extends to other required programs.

As the USEPA has recently changed its policy, the position taken in this action is consistent with the USEPA's current national policy. That policy permits redesignation to proceed without otherwise required NSR programs having been fully approved and converted to contingency provisions provided that the area demonstrates, as has been done in this case, that maintenance will be achieved with the application of PSD rather than part D NSR.

Comment

One commentor suggests that the USEPA's rulemaking is an effort to permit Michigan to avoid including the 15 percent Rate-of-Progress (ROP) measures, required of moderate nonattainment areas in the SIP. It is essential to have elements of the 15 percent ROP plan available as contingency measure in the attainment plan. It is not clear that the current rulemaking procedure will allow that to happen.

USEPA Response

As explained above, under the USEPA's interpretation of section 107, an area need not meet all section 110 and part D requirements that become applicable after the submittal of a complete redesignation request in order to have the request approved. Therefore, the 15 percent ROP plan, which was not due to be submitted until November 15, 1993, after the submission of the redesignation request, is not required to be fully approved into the SIP before redesignating the area to attainment. Similarly the section 175A contingency plan need not include all measures that

[9] The U.S. EPA is not suggesting that NSR and PSD are equivalent, but merely that they are the same type of program. The PSD program is a requirement in attainment areas and designed to allow new source permitting, yet contains adequate provisions to protect the NAAQS. If any information including preconstruction monitoring, indicates that an area is not continuing to meet the NAAQS after redesignation to attainment, 40 CFR 51 appendix S (Interpretive Offset Rule) or a 40 CFR 51.165(b) program would apply. The USEPA believes that in any area that is designated or redesignated as attainment under section 107, but experiences violations of the NAAQS, these provisions should be interpreted as requiring major new or modified sources to obtain VOC emission offsets of at least a 1:1 ratio, and as presuming that 1:1 NO_X offsets are necessary. See October 14, 1994 memorandum from Mary Nichols entitled Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment.

[10] The U.S. EPA also notes that in the case of the Michigan area, all permits to install for major offset sources and major offset modifications issued by the State in the moderate nonattainment areas since November 15, 1992 have complied with the 1.15 to 1.0 offset ratio. In addition, permits to install cannot be issued under the PSD program unless the applicant can demonstrate that the increased emissions from the new or modified source will not result in a violation of the NAAQS. Michigan's Rule 702, which is part of the SIP, requires the installation of Best Available Control Technology regardless of size or location of all new and modified sources in the State. In addition, Michigan's Rule 207, also approved in the SIP, requires denial of any permit to install if operation of the equipment will interfere with attainment or maintenance of the NAAQS.

would have been included in the 15 percent plan since those measures were not required to be included in the SIP prior to redesignation. Furthermore, some elements of the incomplete 15 percent ROP plan that Michigan did submit for the Detroit-Ann Arbor area are included in the maintenance plan and are available as contingency measures in the maintenance plan. These elements include basic I/M, Stage I expansion,[11] and Stage II vapor recovery. The USEPA believes that the menu of contingency measures is adequate and that additional contingency measures are not necessary.

As for the commentor's effort to ascribe subjective motivations to the USEPA in acting on this redesignation, the USEPA believes such contentions are simply irrelevant.

Comment

One commentor states that there can be no redesignation until Michigan submits a complete and approvable 15 percent ROP plan. The commentor alleges that since Michigan's application was not complete on November 12, 1993, all moderate area provisions including the 15 percent plan must be in place to accomplish the redesignation. The commentor notes that Stage II vapor recovery and an upgraded I/M program should be in Michigan's SIP to assure continued maintenance of the NAAQS.

USEPA Response

After the USEPA's review, on January 21, 1994, the redesignation request was found complete on the basis of the completeness criteria codified in 40 CFR part 51, appendix V. As explained above, the November 12, 1993 request was based on three complete years of clean data, and the consideration of subsequent air quality data does not alter the conclusion that that request was complete. Thus, the November 12, 1993 redesignation request is complete and, in accordance with the USEPA's policy on applicable requirements (described above), the 15 percent plan need not be submitted or approved prior to approval of the redesignation.

With respect to the commentor's assertions regarding the need for Stage II vapor recovery and an upgraded I/M program to assure maintenance, the USEPA notes that the State has provided an adequate demonstration that maintenance will occur even in the absence of those programs. The State's emissions projections underlying the maintenance demonstration are discussed in the proposal at 59 FR 37197, and the commentor has provided no evidence that those projections are erroneous. Furthermore, the USEPA notes that Stage II vapor recovery and an upgraded I/M program were not implemented in the area in the period of attainment and therefore, did not contribute to attainment of the ozone NAAQS. Stage II vapor recovery and basic I/M, however, are control measures included as contingency measures within the maintenance plan. Thus, Stage II and basic I/M may be implemented in the event a violation of the ozone NAAQS occurs during the maintenance period. The basic I/M program included in the contingency plan would upgrade and expand the current I/M program being implemented in the Detroit area. As the Detroit-Ann Arbor area has demonstrated attainment and maintenance of the ozone NAAQS without implementation of Stage II and an upgraded I/M program those measures may be made part of the contingency plan without implementation until such time as a violation of the ozone NAAQS warrants their implementation. The State, however, must continue to implement all programs currently in place in the Detroit-Ann Arbor area including the existing I/M program.

Comment

Several commentors suggested that meteorological conditions observed in Michigan and Canada were not conducive to ozone formation. These meteorological conditions, coupled with a general reduction of emissions in the Detroit-Ann Arbor area resulting from an economic downturn, resulted in the attainment claimed by the Detroit-Ann Arbor area. The commentors believe that the attainment claimed by Michigan is not based on real reductions of ozone precursor gases (NO_X and VOC).

USEPA Response

Section 107(d)(3)(E)(iii) requires that, for the USEPA to approve a redesignation, it must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions. The September Calcagni memorandum, at page 4, clarifies this requirement by stating that ''[a]ttainment resulting from temporary reductions in emission rates (e.g., reduced production or shutdown due to temporary adverse economic conditions) or unusually favorable meteorology would not qualify as an air quality improvement due to permanent and enforceable emission reductions.'' As discussed in the July 21, 1994 Federal Register notice, the State of Michigan has demonstrated that permanent and enforceable emission reductions are responsible for the recent improvement in air quality. This demonstration was accomplished through an estimate of the reductions (from the year that was used to determine the design value for designation and classification) of VOC and NO_X achieved through Federal measures such as the Federal Motor Vehicle Control Program (FMVCP) and fuel volatility rules implemented from 1988–1993, as suggested by the September Calcagni memorandum. The total reductions achieved from 1988 to 1993 were 226 tons of VOC and 45 tons of NO_X per day. These emission reductions were primarily the result of the FMVCP and RVP reductions from 11.0 pounds per square inch (psi) in 1988, to 9.5 in 1990 and finally, to 9.0 in 1993. The State only claimed credit for emission reductions achieved as a result of implementation of these federally enforceable control measures. These emission reductions claimed by Michigan are conservative since they do not account for emission reductions resulting from other control measures and programs implemented during this time period such as the current I/M program and VOC RACT. The State, therefore, adequately demonstrated that the improvement in air quality is due to permanent and enforceable emission reductions of 226 tons VOC and 45 tons of NO_X per day as a result of implementing the federally enforceable FMVCP and RVP reductions.

With respect to the issue of unusually favorable meteorology, the commentors have not supplied and the USEPA is not aware of data demonstrating that the meteorological conditions in the Detroit-Ann Arbor area in 1990 and subsequent years were unusually favorable with respect to the impact on ozone formation. The USEPA examined the average meteorological parameters of maximum monthly temperatures, monthly precipitation, and days with temperatures greater than 90 degrees Fahrenheit for the periods of April through September, 1991 through 1993, with the 9-year (1982–1990) averages for these parameters. The 1991–1993 averages for these parameters agreed with those for the 9-year averages with only minor differences. Based on averaged parameters, it can be concluded that the 1991–1993 period was typically conducive to ozone formation. Further, the USEPA notes that the Detroit-Ann Arbor area has been in attainment for three consecutive three-year periods (1990–1992, 1991–

[11] The expanded applicability of Stage I to county boundaries of each nonattainment area classified as moderate and above.

1993, and 1992–1994), and that this, along with the fact that real emission reductions have occurred, indicates that attainment is not due to unusually favorable, temporary meteorological conditions.

Comment

A few commentors noted that ''Ozone Action!'' days were declared on selected bad meteorology days, with extensive media publicity asking the public to reduce activities having the potential to emit ozone precursors. It is entirely possible that the voluntary reduction program had an effect in the summer of 1994 to reduce potential ozone excursions. The existence of the voluntary program should be considered in evaluating the summer 1994 data. In addition, one commentor stated that this is an attempt to deny industry's responsibility to reduce emissions by shifting the burden onto private households though these ''Ozone Action!'' days.

USEPA Response

Attainment has been demonstrated for 1990–1992, and 1991–1993, and an attainment level of emissions identified at which time no such voluntary program was being implemented in the Detroit-Ann Arbor area. Michigan has also demonstrated through emission projections that the precursor emissions will remain below the attainment year levels thorough the year 2005 without accounting for any emission reductions that may have resulted from implementation of a voluntary program. With respect to any possible impact of a voluntary emission reduction program on 1994 emissions, the USEPA notes that the commentor has not provided and the USEPA has no basis for attempting to assess the impact of such program on emission and monitored air quality levels. Thus, the USEPA has no basis for any determination regarding the impact of the program, and does not believe that speculation regarding such impacts provides a basis for disapproving the redesignation.

Comment

One commentor states that emission control programs mandated by the Act cannot be converted to contingency measures, that the Act does not authorize conversion of required emission reduction programs to contingency measures and that section 175A(d) imposes a mandatory duty on an area that is redesignated to continue the emission control programs the area adopted prior to redesignation. The commentor further elaborates by stating that ''the SIP implementation requirement is included in the section discussing contingency provisions because contingency provisions automatically become effective if an area fails to implement the applicable SIP requirements. Inclusion of the provision in section 175A(d) does not by any stretch of statutory interpretation authorize converting a control measure that must be complied with now to a contingency measure that only need be complied with at some later date, if ever.'' The commentor also contended that allowing the conversion of mandatory control programs to contingency measures is bad policy since the public will suffer harmful exposure during the time necessary to implement the program after the event triggering the contingency measures occurs. According to the commentor, the delay would be exacerbated due to the USEPA's failure to require adopted regulations for the programs.

USEPA Response

The Act contains many requirements that States adopt certain measures specifically for nonattainment areas. Those requirements do not by their own terms continue to apply to an area after it has been redesignated to attainment. Moreover, nothing in section 175A itself suggests that these requirements must continue to be met in redesignated areas. Section 175A(d) is specifically and clearly applicable to contingency provisions and their inclusion in a section 175A maintenance plan. Section 175A(d) establishes that SIP revisions submitted under 175A must contain contingency provisions, as may be necessary, to assure that the State will promptly correct any violation of the ozone NAAQS that occurs after redesignation to attainment. It further requires that these contingency provisions include a requirement for the State to implement all measures with respect to the control of ozone that were in the nonattainment SIP before the area was redesignated. This provision clearly demonstrates that section 175A(d) contemplates that there may be fully adopted but unimplemented control measures in the SIP prior to redesignation that will be shifted into the maintenance plan as contingency measures. Nothing in section 175A suggests that the measures that may be shifted into the contingency plan do not include programs mandated by the Act when the area was designated nonattainment. As section 175A(a) requires adoption and implementation of measures to ensure maintenance, it indicates that measures may not be converted to contingency provisions unless the State demonstrates that the standard will be maintained in the absence of the implementation of such measures.

The USEPA disagrees with the commentor's assertion that its policy regarding the conversion of emission control programs mandated by the Act to contingency measures is bad policy due to delays that could occur. Programs required to be adopted and submitted to the USEPA prior to the submission of a redesignation request will already have been adopted and may be implemented with minimal delay in the event contingency measures are triggered. Such measures satisfy the requirement of section 175A(d) that the contingency provisions ''promptly correct any violation of the standard which occurs after redesignation.''

With respect to the commentor's specific assertions that the USEPA should require upgrades to basic I/M and NSR programs to be fully adopted by the State and approved by the USEPA prior to redesignation, the USEPA notes first that it does not interpret the Act to require Michigan to adopt the I/M upgrades fully now if it otherwise qualifies for redesignation to attainment. Rather, as evidenced in the USEPA's final I/M rule revisions, described above and in the proposal, Michigan is required only to adopt the upgrades as a contingency measure in order to meet the requirements for basic I/M in section 182(a)(2)(B)(i) and (b)(4). Michigan has done that. Under its submittal, Michigan must implement basic I/M 18 months from the date the Governor decides to implement the program as a contingency measure and Michigan's contingency plan contains other control measures which would result in near term emission reductions that will be more effective towards correcting a violation of the NAAQS than a NSR program, such as Stage I or Stage II vapor recovery.

The commentor also suggests that since the current ozone NAAQS is not sufficiently protective of public health the USEPA should not be concerned with over control. In response, as previously discussed, the USEPA is currently reviewing the ozone NAAQS. Unless and until the NAAQS is revised, the USEPA is to make judgements on the basis of the current NAAQS, e.g., determine whether a maintenance plan assures maintenance of the current ozone NAAQS.

Comment

One commentor noted that Stage II vapor recovery was expected to account for at least 22.5 tons per day (TPD) or 17 percent of the 15 percent ROP plan, that mobile sources account for 50

percent of air toxic emissions, and that refueling automobiles is the most significant source of benzene exposure for the average person. As proposed, the redesignation would finally eliminate Stage II vapor recovery from the SIP. An improved I/M program was expected to account for reductions of 61.6 TPD or nearly half of the 15 percent ROP. The commentor adds that these 15 percent ROP measures may be contingency measures in the maintenance plan, rather than immediately required at any point in the future. Nevertheless, any such transfer of a maintenance measure in the SIP to a contingency measure, to be required only if certain triggering events occurred, must be accompanied by a demonstration that the SIP measures are no longer necessary for maintenance. Any proposed transfer and demonstration of justification of the transfer must be subject to public notice and comment, as required by the Act.

USEPA Response

Air toxic emissions or benzene exposure are not relevant to this rulemaking since it pertains to an ozone redesignation. Moreover, this redesignation in no way exempts the area from the air toxics requirements of section 112 or other provisions of the Act.

Since the area was able to demonstrate maintenance through an emissions projection analysis showing that future VOC and NO_X emissions will remain below the attainment year level of emissions (the level of emissions sufficient to attain the NAAQS), the USEPA concludes that currently required and future mandated control programs (e.g., FMVCP) are sufficient to provide for attainment and maintenance of the NAAQS. However, contingency measures in the maintenance plan are required in accordance with section 175A(d). The maintenance plan for the Detroit-Ann Arbor area contains contingency measures which would be implemented when triggered by a violation of the ozone NAAQS. USEPA guidance allows the transfer of SIP measures which came due prior to submittal of a complete redesignation request to the maintenance plan as contingency measures if the area demonstrates attainment without implementation of these measures and therefore, are unnecessary for attainment. The State has adequately demonstrated that maintenance will occur in the absence of the implementation of the measures cited by the commentor. Finally, the demonstration for the transfer was subject to public notice and comment during Michigan's public comment period and hearing, as well as the USEPA's comment period, as required by the Act.

Comment

One commentor notes that to be effective at restoring air quality when a post-redesignation violation occurs, contingency measures must include measures in the 15 percent ROP plan. In elaborating, the commentor notes that a contingency plan which lacks a program for enhanced I/M, Stage II and conformity is an empty box with no benefits. The precedent of ''grandparenting'' in moderate areas by allowing redesignation without requiring inclusion of the attainment plan's 15 percent plan as a contingency measure in the maintenance plan is a dangerous precedent for Region 5 to set. It has the potential to result in the gutting of the Act nationwide by a seemingly innocuous rulemaking at the Regional level.

It is unclear that the verification and tracking measures described at 59 FR 37199 (July 21, 1994) will ever actually trigger the requirement to implement the contingency plan.

USEPA Response

The contingency plan contains, as contingency measures, all of the unimplemented SIP control measures that were required prior to submittal of the complete redesignation request, including basic I/M, Stage II, Stage I expansion, and NO_X RACT. As noted in the proposal, Stage II is no longer a required measure due to the USEPA's promulgation of on-board vapor recovery requirements. In addition, the State has also included 7.8 RVP [12] and intensified degreasing for degreasing operations [13] as contingency measures. The USEPA does not believe that this contingency plan is an ''empty box with no benefits'' instead that the contingency measures in the plan would provide very real benefits in terms of potential emission reductions that the USEPA believes are adequate to deal with potential future violations. The area is not required to include all measures from its 15 percent plan in its contingency plan since the 15 percent plan was not an applicable requirement at the time the State submitted a complete redesignation request.

In addition, Region 5 is not setting a precedent of ''grandparenting'' of the 15 percent ROP requirement as contingency measures in the maintenance plan. This is consistent with national policy that has already been established and has been discussed above. See September Calcagni and September Shapiro memorandums.

Regarding transportation conformity, once redesignated, the Detroit-Ann Arbor area will be a maintenance area and, therefore, required to conduct emission analyses to determine whether the VOC and NO_X emissions remain below the motor vehicle emission budget established in the maintenance plan. The July 21, 1994 proposal (59 FR 37190) does address conformity with respect to the redesignation on p. 37196. The proposal further discusses that, although conformity is applicable in these areas, since the deadline for submittal had not come due for these rules, the approval of the redesignation is not contingent on these submittals to comply with section 107(d)(3)(E)(v). However, transportation and general conformity apply to maintenance areas and therefore, the Detroit-Ann Arbor area must comply with these rules once redesignated to attainment. The June 17, 1994 Conformity General Preamble (59 FR 31238) to the conformity regulations further clarifies this issue. According to the conformity rules and preamble, the Detroit-Ann Arbor area's conformity test will be to remain within the VOC and NO_X budgets established in the section 175A maintenance plan.

The July 21, 1994 notice does describe a tracking plan for updating the emission inventory. As discussed, the redesignation request commits Michigan to conduct periodic inventories every 3 years, provides a schedule for these submittals, and lists the types of factors used in projecting the emission inventories. The State notes that if the factors change substantially, the State would reproject emissions for the maintenance period to determine whether apparent increases in emissions are due to changes in calculation techniques or actual emissions. Although these periodic emission inventories are not a mechanism to trigger implementation of contingency measures, if the periodic inventories exceed the attainment level of emissions in the maintenance plan, the USEPA may issue a SIP call to the area under section 110(k)(5) on the basis that the State made inadequate assumptions in projecting the inventory used to demonstrate maintenance. In this event, the USEPA may require the State to correct the projection inventory and, if increases are projected, propose and

[12] Lower RVP to 7.8 psi may only be implemented as a contingency measure if the State submits and the USEPA finds, under section 211(c)(4)(C) of the Act, that the lower RVP requirement is necessary for the area to achieve the ozone NAAQS.

[13] Intensified RACT for degreasing operations would entail requiring more stringent controls than are currently specified in Michigan Rules 611, 612, 613, and 614.

ultimately implement maintenance measure(s) to lower the emissions to a level at or below the attainment year level. Since USEPA policy only suggests that level of emissions be included as a triggering mechanism or method of monitoring the area emissions, States are provided the flexibility not to include such a triggering mechanism.

The Detroit-Ann Arbor area's contingency plan contains one trigger, a monitored air quality violation of the ozone NAAQS, as defined in 40 CFR section 50.9. The trigger date will be the date that the State certifies to the USEPA that the air quality data are quality-assured, and no later than 30 days after an ambient air quality violation is monitored. Once the trigger is confirmed, the State will implement one or more appropriate contingency measures based on a technical analysis using a UAM analysis. The Governor will select the contingency measures within 6 months of the trigger. The control measures which may be used as contingency measures within the maintenance plan are I/M upgrades, NO_X RACT, Stage I expansion, Stage II, RVP reduction to 7.8 psi and intensified RACT for degreasing operations. As explained in the proposal, the USEPA believes that these measures are adequate to restore air quality in the event of a post-redesignation violation.

Comment

The commentor notes that the Detroit-Ann Arbor area is the fastest growing business area in Michigan, and that ''if regulations are not implemented now, it will take years for companies to comply with new regulations added later.'' [sic] Local industry should have to implement common-sense, cost-effective, pollution-control measures to protect the people in the area.

USEPA Response

The area is currently implementing numerous emission control measures and will continue to do so even after redesignation to attainment for ozone. While the area may be growing, the State has considered the impacts of growth not just in mobile sources, but also industrial sources of ozone precursors in its maintenance plan. The State has adequately shown that permanent and enforceable controls will continue to more than offset the impact of any such growth through the maintenance period as its projections indicate that emissions will decrease during the maintenance period. In the event, the area is redesignated and happens to record a violation of the ozone NAAQS, however, the section 175A maintenance plan specifies control measures which would be implemented as contingency measures in accordance with the schedules specified in the July 21, 1994 and this final rule.

Comment

One commentor notes that the maintenance plan and contingency measures are not likely to protect maintenance of the NAAQS for ozone, because the timeline for implementing corrective measures is too protracted, providing too little protection, too late.

USEPA Response

For clarification, the contingency measures are intended to provide for maintenance by addressing a violation of the ozone NAAQS; maintenance measures serve to provide for maintenance of the NAAQS. The contingency measure implementation schedules were derived from the Act and applicable State and Federal regulations. As explained in the proposal and this final action, the schedule established for the implementation of contingency measures provides for the implementation of such measures as soon as within one year of a violation. Also, as explained in the proposal, the USEPA believes that this schedule satisfies the criterion of section 175A regarding the need for contingency measures to promptly correct violations of the standard occurring during the maintenance period.

Comment

One commentor alleges that the maintenance demonstration relies on fleet turnover with new cars required to have on-board canisters and perhaps enhanced fuel efficiency to create reductions of VOC emissions sufficient to compensate for the steady growth of VMT[14] and keep Southeast Michigan in attainment. With an average time for fleet turnover of 10 to 15 years, those measures will have little effect on maintenance of attainment in the near term.

USEPA Response

The State is not relying on on-board canisters in its emission projections through the maintenance period. The maintenance demonstration through emission projections must demonstrate that the emissions will not exceed the attainment year inventory. See General Preamble (April 16, 1992, 57 FR 13498) and September Calcagni memorandum. Michigan has demonstrated that, by considering the effects of permanent and enforceable control programs (not including the on-board vapor recovery rule), as well as, growth in the area (including VMT growth), through the year 2005 emissions will remain below the attainment year inventory. See 59 FR 37190, tables on p. 37198. Neither the Act nor USEPA guidance specifies or suggests that the State achieve other emission reductions during the maintenance period. The USEPA reviewed the projection inventory methodologies and found them to be appropriate. Furthermore, transportation conformity provides another emission management mechanism. The transportation conformity rules (November 24, 1993, 58 FR 62188) and General Preamble (June 17, 1994, 59 FR 31238) apply to nonattainment and maintenance areas. The General preamble clarifies that conformity analyses must demonstrate that VOC and NO_X emissions will remain within the motor vehicle emission budget as approved in a section 175A maintenance plan.

Comment

One commentor states that an ozone precursor, NO_X, can scavenge ozone. For this reason, NO_X controls can actually increase ozone levels in metropolitan areas while beneficially affecting downwind areas. The lack of NO_X controls in the Metropolitan Detroit area would help in attaining the 120 ppb ozone standard but this approach would have no net benefit downwind (southwestern Ontario). The commentor concludes that both NO_X and VOC must be controlled. Another commentor notes that there is too little information about the interaction between VOC and NO_X to justify granting an exemption from NO_X controls.

USEPA Response

Section 182(f)(1)(A) of the Act allows the Administrator to exempt an area outside an ozone transport region from the section 182(f) NO_X requirements, if the USEPA determines that ''additional reductions of [NO_X] would not contribute to attainment'' of the ozone NAAQS in the relevant area. It is clear that if an area has demonstrated attainment of the ozone NAAQS with 3 consecutive complete years of air quality monitoring data, additional NO_X reductions would not contribute to attainment, since the area has already attained. Therefore, a State may submit a petition for a section 182(f) exemption based on air quality monitoring data showing attainment of the ozone NAAQS. The USEPA's approval of such

[14] VMT is the number of miles traveled by vehicles of various types, preferably for each link of the highway system.

an exemption is granted on a contingent basis, i.e., the exemption would only be valid as long as attainment of the ozone NAAQS continues. If prior to final action to redesignate the area to attainment the USEPA determines that a violation of the NAAQS occurred, the section 182(f) exemption would no longer apply, as of the date of such a determination. See December 1993 guidance document Guideline for Determining the Applicability of NO_X Requirements under Section 182(f), and the May 27, 1994 memorandum from John Seitz, Section 182(f) NO_X Exemptions—Revised Process and Criteria. In addition, the May 27, 1994 Seitz memorandum, page 3, n. 7, states that while NO_X reductions in areas that request and are granted a section 182(f) exemption may not contribute to attainment, they may contribute to maintenance and must be addressed in the maintenance plan required for redesignation. The Detroit-Ann Arbor area submitted a section 182(f) NO_X exemption on November 12, 1994 based on 3 consecutive years of monitoring data demonstrating attainment of the ozone NAAQS. The Detroit-Ann Arbor area submitted the appropriate NO_X documentation in their redesignation maintenance plan. By doing so, the State has demonstrated a commitment to control NO_X if it is deemed necessary to maintain the ozone standard. The USEPA approved the section 182(f) NO_X exemption petition for the Detroit-Ann Arbor area in a final USEPA action published elsewhere in this Federal Register.

With respect to the aspects of the comments relating to the effects of NO_X controls or the lack of NO_X controls on ambient air in Canada, the USEPA refers the reader to the responses to the comments set forth below.

In addition, the redesignation request establishes VOC and NO_X emission budgets, establishing emission levels adequate to attain the ozone NAAQS. The State has also demonstrated through emission projections that the area's emissions will remain below the attainment year inventory through the year 2005. Consequently, the State has demonstrated that NO_X levels will not exceed current levels through the maintenance period.

In response to the commentors note that there is too little information about the interaction between VOC and NO_X to justify granting an exemption from NO_X controls, the USEPA refers the commentor to the NO_X/VOC Study released by the USEPA on July 31, 1993. Congress provided that USEPA decisions on personal petitions for NO_X exemptions under section 182(f)(3) be triggered by publication of this 185B report. Consequently, the USEPA believes that this provides evidence that Congress appears to have believed the results of the 185B study would supply sufficient information for the Agency to grant section 182(f) exemptions. The USEPA refers the commentor to the final rulemaking approving the section 182(f) NO_X exemption petition for the Detroit-Ann Arbor area published elsewhere in this Federal Register.

Nonetheless, as demonstrated by the emission projections for the 10-year maintenance plan submitted by Michigan, continuing reductions in NO_X emissions are expected (primarily from mobile sources as a result of FMVCP). Also, additional NO_X emission reductions are expected from implementation of the NO_X controls required by title IV of the Act. Designation status of an area is irrelevant in the applicability of title IV requirements; consequently, subject sources in the Detroit-Ann Arbor area will be required to comply with these requirements.

Comment

One commentor notes that the action of proposed redesignation is a product of undue haste and that the final decision on redesignation should await data from Canada's study of ozone levels at its receptors which are down-wind of Southeast Michigan. A number of other commentors suggested that the USEPA respond to concerns expressed by Ontario and Canada prior to making any decision. Another commentor suggests that the USEPA obtain and assess ambient ozone levels prior to proceeding with the redesignation.

USEPA Response

The USEPA has received comments and information from a number of Canadian interests. All comments from commentors in Canada have been considered as the USEPA made a final decision on this action, and are addressed within this final rulemaking. As explained below, the USEPA does not believe that these comments warrant a deferral of final action on this redesignation.

Comment

One commentor states that between 60 percent-80 percent of toxic air pollutants in Windsor's ambient air are transported from the City of Detroit and other U.S. areas northwest of Windsor. Another commentor suggests that the technology needed to reduce ozone closely parallels the technology needed to abate toxic air pollutants in the region. By designating the area as attainment, the region will no longer be required to include ozone reduction technology in the State of Michigan's SIP under the Act. This could eliminate further technological improvements that would not only reduce ozone levels but also contribute to the abatement of toxic air pollution. Since the Governments of the United States and Canada, in their Reference to the International Joint Commission (IJC), have emphasized that the IJC address the impacts of toxic air pollution problems in the region, the IJC cannot support any move that would result in less stringent controls which have direct impact on minimization of ozone levels and reduction of toxic chemical emissions. Consequently, the commentor strongly disagrees with the proposed USEPA redesignation and recommends against it. The commentor believes that the control requirements of the Act for this area should be implemented.

USEPA Response

This redesignation is for ozone. Toxic air pollutants are not relevant to the issue of whether an area should be redesignated due to its attainment of the ozone NAAQS. Separate from this redesignation, the State is required to meet other requirements of the Act specifically to control air toxics emissions. The ozone redesignation would not exempt the area from implementing section 112 of the Act, which is intended to address the control of hazardous air pollutants. Rules promulgated pursuant to section 112 are applicable to sources regardless of an area's attainment status.

In addition, sources of ozone precursors in the Detroit-Ann Arbor area must continue to implement all control equipment and/or measures in accordance with applicable rules, regulations and permits. Consequently, the redesignation would not result in less stringent controls than are currently being implemented in the Detroit-Ann Arbor area.

Comment

One commentor notes that Canada and Ontario are assembling data from Canadian monitoring stations which are directly relevant to the decision as to whether the Detroit-Ann Arbor area is currently meeting the prescribed Act requirements with respect to ozone. The commentor states that this information and other points will be provided to the Department of State on October 17, 1994. (On October 17, 1994 a document entitled Canada/Ontario Technical Component of the Canadian Comment on the Michigan/Ann Arbor Ozone Redesignation Request was submitted.

This document was prepared by Environment Canada and the Ontario Ministry of the Environment and Energy). The commentor expects that this information would be considered in any final decision. A copy of the September 23, 1994 letter from the IJC to Warren Christopher, Secretary of State, was attached. Another commentor claims that the Canadians in Southern Ontario are affected by some of the worst smog episodes in Canada. Many commentors state that much, if not all, of the ground level ozone in Southern and Southeastern Ontario is a result of transboundary movement of ozone and NO_X from the U.S. to Canada. Michigan is a significant source of the ozone and NO_X coming from the U.S. A number of commentors provided monitoring data from monitors located in Southwestern Ontario and the Detroit-Ann Arbor area and assert that high ozone levels recorded in the Detroit-Ann Arbor area correspond directly with high ozone levels which exceed Ontario's ozone standard. Some commentors noted that high levels of ozone in Ontario may be the cause of increased respiratory problems. Another commentor noted that a recent study in southern Ontario indicates that hospital admissions for respiratory problems has increased due to ozone and acidic air pollution. This situation is occurring at ozone levels well below the 125 ppb averaged over one hour. Another commentor suggests that being another sovereign nation and not a neighboring State, Canada is denied protection available to downwind States adversely affected by emissions from upwind neighbors within the U.S. Another commentor notes the damaging effect of ozone on agricultural crops.

USEPA Response

The USEPA has considered the October 17, 1994 submittal referred to and all other information provided by the Canadian Government and other commentors on these issues.

The following provides a synopsis of the USEPA's review of the October 17, 1994 document submitted by Environment Canada and the Ontario Ministry of the Environment and Energy. The document contains, among other elements, some ozone monitoring data. However, the ozone monitoring data was inadequate for the USEPA to assess whether a violation of the U.S. ozone NAAQS occurred in Canada. Consequently, on November 1, 3 and 24, and December 14 and 19, 1994 the USEPA obtained clarifying information from the Ontario Ministry of the Environment and Energy on the ozone monitoring data submitted.

In reviewing the Canadian ozone monitoring data, the USEPA examined each 3-year interval from 1990 through 1994 as well as associated wind patterns. Based on a review of the Canadian report and the clarifying information, the monitoring data demonstrates that there has not been a violation of the U.S. ozone NAAQS at the Windsor (University or South), Sarnia, Merlin, Mandaumin, London, Longwoods, or Parkhill monitors for the timeframe 1990–1992, 1991–1993, or 1992–1994. In fact, the only monitors that have recorded violations of the U.S. ozone NAAQS are the Grand Bend monitor and Tiverton monitor, which are located more than 90 miles and 140 miles away from the Detroit-Ann Arbor area, respectively. The Grand Bend monitor recorded violations of the U.S. ozone NAAQS during the timeframe 1990–1992 with a number of expected exceedances of 1.67 and during 1991–1993 of 2.0. However, for the 1992–1994 period, there was no violation of the U.S. ozone NAAQS with a number of expected exceedances at 0.33. The Tiverton monitor recorded violations of the U.S. ozone NAAQS during the timeframes 1990–1992 and 1991–1993 with a number of expected exceedance of 2.0. However, during the 1992–1994 period, there was no violation of the U.S. ozone NAAQS.[15]

In addition, the modeling submitted on October 17, 1994 is limited and insufficient for purposes of implicating the Detroit-Ann Arbor area as the cause of elevated ozone levels in Ontario[16].

The ground level wind trajectories presented in the October 17, 1994 submittal, indicate that winds into Tiverton and the Windsor area pass through a number of urbanized areas in both the U.S. and Canada (the Windsor urbanized area). The USEPA also notes that such concentration may be attributable to or fostered by ozone precursor emissions generated within Canadian borders, since Windsor itself is an urban area with an estimated metropolitan population greater than 225,000. Thus, the extent of any contribution from the Detroit-Ann Arbor area to monitored ozone levels in Ontario cannot be determined with any degree of certainty on the basis of the information presently available to the USEPA. The data provided in the October 17, 1994 submittal are inadequate to provide a basis for determining the extent to which emissions from Michigan, and more specifically, the Detroit-Ann Arbor area, are contributing to ambient ozone levels in Ontario. As a consequence, the USEPA does not believe that the presently available information provides any basis for affecting its decision regarding the redesignation of the Detroit-Ann Arbor area.

The USEPA would like to note that the governments of the United States and Canada are in the process of developing a joint study of the transboundary ozone phenomena under the U.S.-Canada Air Quality Agreement. It is envisioned that this regional ozone study will provide the scientific information necessary to understand what contributes to ozone levels in the region, as well as, what control measures would contribute to reductions in ozone levels. Should this or other studies provide a sufficient scientific basis for taking action in the future, the USEPA will decide what is an appropriate course of action. The USEPA may take appropriate action notwithstanding the redesignation of the Detroit-Ann Arbor area. Therefore, the USEPA does not believe that the contentions regarding transboundary impact currently provide a basis for delaying action on this redesignation or disapproving the redesignation. This is particularly true since approval of the redesignation is not expected to result in an increase in ozone precursor emissions and is not expected to adversely affect air quality in Canada. In fact, a decrease in both VOC and NO_X emissions from the Detroit-Ann Arbor area is expected over the 10-year maintenance period. See 59 FR 37190, July 21, 1994. It should also be noted that redesignation does not allow States to automatically remove control programs which have contributed to an area's attainment of a U.S. NAAQS for any pollutant. As discussed previously, the USEPA's general policy is that a State may not relax the adopted and implemented SIP for an area upon the area's redesignation to attainment unless an appropriate demonstration[17],

[15] The October 17, 1994 submittal and subsequent clarifying information revealed that the Tiverton monitor recorded one exceedance in 1994. The exceedance, a value of 136 ppb, was recorded on April 24, 1994 at 7:00 PM. However, based on clarifying information provided by the Ontario Ministry of the Environment and Energy, this ozone value was invalidated. The strip chart recorder registered interference (electrical or otherwise) on April 24, 1994 between the hours of 5:00 PM through 8:00 PM and for 10:00 PM. Consequently, the data for these hours was invalidated by the Ontario Ministry of the Environment and Energy.

[16] Among the inadequacies were that the submittal had limited documentation on the model input parameters. The ADOM-GESIMA model is not a USEPA guideline model as listed in the Guideline on Air Quality Models, (revised in February 1993). Further model documentation is necessary for a comparative evaluation against USEPA guideline models.

[17] Such a demonstration must show that removal of a control program will not interfere with

based on computer modeling, is approved by the USEPA. In this case, no previously implemented control strategies are being relaxed as part of this redesignation.

The health effects of acidic air pollution are not relevant to this ozone redesignation. However, the USEPA is aware of the study referenced by the commentor and is considering this study in the process of reevaluating the ozone NAAQS.

Further, apart from title I requirements related to the cessation of the Detroit-Ann Arbor area's status as an ozone nonattainment area, the area is and will continue to be required to satisfy all Act requirements. Other control programs required by the Act will be implemented in the area, regardless of the ozone designation, such as title IV NO_X controls, section 112 toxic controls and on-board vapor recovery requirements.

Comment

One commentor notes that recent information indicates that significantly high ozone readings have been recorded in the Town of Kincardine this summer. Kincardine is halfway up the eastern shoreline of Lake Huron, and therefore, the air quality in Kincardine is, for the most part, a result of emissions from Michigan. The commentor requests that the USEPA reconsider the redesignation of the area because it will have drastic effects on the communities on the eastern shore.

USEPA Response

Kincardine is more than 100 miles northeast of the Detroit-Ann Arbor area, the subject of the redesignation to attainment for ozone. Consequently, attributing elevated ozone levels in Kincardine to the Detroit-Ann Arbor area would be a complex task. It cannot be conclusively stated that emissions emanating from the Detroit-Ann Arbor area are, ''for the most part,'' responsible for elevated ozone concentrations recorded at a monitor more than 100 miles away. As demonstrated by the wind trajectories provided by Canada as part of the October 17, 1994 submittal, it can be seen that air parcels travel through several U.S. and Canadian urbanized areas. Again, it is noted that the U.S. and Canada are cooperatively developing a regional ozone study to investigate the transboundary ozone phenomena.

Comment

One commentor states that the transboundary ozone issue points to the need to manage air quality in a regional context and notes that in their meeting of July 25, 1994 in Washington, Carol Browner, Administrator of the United States Environmental Protection Agency, and Sheila Copps, Deputy Prime Minister, Minister of the Environment, Canada, agreed to cooperate in regional management of the transboundary ozone problem. The commentor suggests that the Great Lakes region provides an ideal opportunity to advance this concept.

USEPA Response

Subsequent to the Browner/Copps meeting, the U.S. and Canadian Governments have met to discuss and develop a regional pilot program to address any potential regional transboundary ozone issue. This new regional pilot effort is being developed as a priority under the U.S.-Canada Air Quality Agreement.

Comment

One commentor states that the Southeast Michigan Council of Governments has discussed the redesignation at past meetings of the Windsor Air Quality Committee, at which local committee members pointed out their concerns to no avail. All information available suggests that the request for redesignation is without scientific merit at present, and is premature at best.

USEPA Response

Ambient air monitoring data in the Detroit-Ann Arbor area demonstrates that the area is attaining the ozone NAAQS. In addition, the State has met all applicable requirements under section 107 of the Act. As previously discussed, the U.S. and Canada are cooperatively developing a regional ozone study to investigate the transboundary ozone phenomena.

Comment

One commentor notes that the March 1991 formal agreement (the March 13, 1991 U.S.-Canada Air Quality Agreement) between the U.S. and Canada called for other parties to take steps to avoid or mitigate the potential risk posed by specific actions. On this basis, it is requested that the USEPA reconsider the consequences of approving this request for southeast Michigan. Another commentor refers to the March 13, 1991 Air Quality Agreement between Canada and the U.S. with respect to the effort of the two countries to address transboundary air pollution through ''cooperative and coordinated action.'' Alleging that ground level ozone production in the Detroit-Ann Arbor area by its movement across the U.S.-Canada border has a significant impact on ozone production and general air quality in the Windsor Southwestern Ontario region of Canada, the commentor expresses concern that the Department of State chose not to provide the Canadian Government with formal advance notice of the intention of the USEPA to act on an issue which would have a major impact on transboundary air pollution.

USEPA Response

Paragraph 1 of Article V of the March 13, 1991 U.S.-Canada Air Quality Agreement states that ''Each Party shall, as appropriate and as required by its laws, regulations and policies, assess those proposed actions, activities and projects within the area under its jurisdiction that, if carried out, would be likely to cause significant transboundary air pollution, including consideration of appropriate mitigation measures.'' Paragraph 2, specifies that parties shall notify each other of actions under paragraph 1. Since the action to redesignate the Detroit-Ann Arbor area to attainment does not result in a relaxation of existing control requirements or an increase in ozone precursor emissions, the USEPA does not believe that formal notification was necessary nor that this action poses a potential risk. Canada is well aware of this redesignation at this time. However, in the future, the U.S. intends to notify Canada of actions similar to this action as early as possible regardless of whether notification is required under the U.S.-Canada Air Quality Agreement. In addition, the U.S. will work with Canada to address tropospheric ozone in the context of the Air Quality Agreement as previously discussed.

Comment

A number of commentors believe that the air quality in the Detroit-Ann Arbor area has not improved but deteriorated in recent years. Recent developments have been detrimental to air quality, such as the operation of a trash incinerator which emits foul smoke into the air around the clock, particularly on weekends when businesses are closed. Instead of recycling, the City of Detroit chooses to pollute southeast Michigan and Ontario's air. Multitudes of industrial plants are located on the Detroit River whose smokestacks cast gray haze over everything, even on sunny days. One commentor lists a number of local facilities which it claims causes visible emissions and

maintenance of the ozone NAAQS and would entail submittal of an attainment modeling demonstration with the USEPA's current Guideline on Air Quality Models. Also, see memorandum from Gerald A. Emison, April 6, 1987, entitled Ozone Redesignation Policy.

offensive odors. Another commentor states that Wayne county ranked #1 in amount of hazardous chemicals released through air emissions (as well as #1 in ''suspected'' carcinogens), and was fearful for her health and future because of current air quality. Another commentor claimed breathing problems caused by outdoor air. Wayne County was accused of posing numerous pulmonary health risks for residents. Improvements in air quality are necessary for the residents' safety and health.

USEPA Response

The July 21, 1994 Federal Register notice proposes to redesignate the Detroit-Ann Arbor area to attainment solely for ozone. The Detroit-Ann Arbor redesignation request satisfies the section 107(d)(3)(E) requirements. Among these requirements is that the area demonstrate attainment of the ozone NAAQS. See section 107(d)(3)(E)(i). The Detroit-Ann Arbor area has demonstrated through 3 consecutive years of complete air quality data, that the area has attained the ozone NAAQS. The area is and will continue to be required to satisfy all Act requirements pertaining to the emission of hazardous air pollutants. Further, existing facilities must continue to operate existing air pollution control equipment in accordance with applicable rules, regulations and permits, and sources that are problematic in terms of posing a nuisance to area residents may be referred to the State and local environmental enforcement staff for investigation. Retaining the area's current nonattainment designation for ozone would not affect visible emissions and/or offensive odors from the existing incinerator. In addition, certain new rules and regulations will still apply to area sources even if the area is redesignated to attainment for ozone; for example, Maximum Achievable Control Technology and additional controls under section 112 (air toxics) of the Act. With respect to the commentor's contention that improvements in air quality are necessary for residents' safety and health, it should be recognized that section 109 of the Act requires that the NAAQS, which must be based on established criteria and allow an adequate margin of safety, protect the public health. Unless and until it is revised, the current ozone NAAQS provides the pertinent standard for protecting public health.

Comment

Many commentors believe that designating the area to attainment would exempt the area from stricter clean air regulations. They believe that the USEPA should require local industry to implement common-sense, cost-effective pollution control measures, more stringent automobile emission testing (current testing is not effective), and service stations to install anti-pollution devices on gasoline pumps (Stage II). The USEPA should encourage that measures be taken to ensure that no pollution problems occur in the future.

USEPA Response

Redesignating the area to attainment for ozone does not exempt the State from implementing measures necessary for attainment. Further, additional regulations such as a basic I/M program, Stage II vapor recovery, or Stage I expansion are incorporated into the area's maintenance plan as contingency measures. The contingency measures selected by the State will be implemented if a violation is experienced.

Comment

One commentor requests the USEPA to require, and to make public, an independent, third party, statistical verification of air quality and related environmental health data to support or dispute claims made by local businesses, a senator and a governor. If monitoring in the southwest section of Detroit is ongoing, then there would be no question that tougher standards are needed.

USEPA Response

The State has established air monitoring networks, sampling and analysis procedures as well as quality assurance and control procedures that satisfy USEPA guidelines. The State will continue to operate its monitoring network after redesignation. Third party statistical verification of air quality data is not required by the guidelines applicable for the purposes of this redesignation.

Comment

One commentor stated that the USEPA should not redesignate the Detroit-Ann Arbor area because it is likely that the area will soon have to be redesignated back to nonattainment. The commentor also provided various information related to increasing VOC emissions and petroleum usage.

USEPA Response

The USEPA believes that Michigan has shown that the Detroit-Ann Arbor area has attained and can continue to maintain the NAAQS for ozone. In the event that a violation of the ozone NAAQS does occur in the future, however, the maintenance plan provides for the implementation of the State's contingency measures under section 175A to promptly correct any violations of the NAAQS, as required by the Act.

With regard to the commentor's contentions concerning VOC emissions and petroleum usage, the USEPA notes that in its showing of maintenance over a 10-year period, the State has technically assessed not only the impacts of reductions due to control programs, but also increases due to growth in all potential sources of emissions. These potential sources include petroleum usage in the mobile source and industrial source sectors. The State has shown in these assessments that reductions in emissions over the maintenance period will more than offset any increases in emissions of VOC. The USEPA's decisions must be based solely on whether Michigan's submission adequately addresses the statutory requirements applicable to redesignation. The USEPA has determined that it does, and is thus approving the redesignation request. Again, in the event that violations of the ozone NAAQS occur, Michigan must promptly implement its contingency measures such that the ozone NAAQS is once again attained and maintained.

II. Final Rulemaking Action

The USEPA approves the redesignation of the Detroit-Ann Arbor, Michigan ozone area to attainment and the section 175A maintenance plan as a revision to the Michigan SIP. The State of Michigan has satisfied all of the necessary requirements of the Act. The USEPA has also approved the section 182(f) NO_X exemption for the Detroit-Ann Arbor area in an action published elsewhere in this Federal Register which exempts the area from the section 182(f) NO_X requirements. As a consequence of this action, the USEPA also stops the sanctions clocks that had been started as a result of the findings made on January 21, 1994, regarding the incompleteness of the 15 percent ROP plan and the section 172(c)(9) contingency plan for the Detroit-Ann Arbor area and on May 11, 1994, regarding the basic I/M plan for the area.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air

and Radiation. The OMB has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 100 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (1976).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Motor vehicle pollution, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, National parks, Nitrogen oxides, Ozone, Volatile organic compounds, Wilderness areas.

Dated: February 8, 1995.

Norman R. Niedergang,

Acting Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart X—Michigan

2. Section 52.1170 is amended by adding paragraphs (c) (101) and (102) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(101) On November 15, 1993, the State of Michigan submitted as a revision to the Michigan State Implementation Plan for ozone a State Implementation Plan for a motor vehicle inspection and maintenance program for the Detroit-Ann Arbor area. Michigan submitted House Bill No. 5016, signed by Governor John Engler on November 13, 1993.

(i) Incorporation by reference.

(A) State of Michigan House Bill No. 5016 signed by the Governor and effective on November 13, 1993.

(102) On November 12, 1993, the State of Michigan submitted as a revision to the Michigan State Implementation Plan for ozone a State Implementation Plan for a section 175A maintenance plan for the Detroit-Ann Arbor area as part of Michigan's request to redesignate the area from moderate nonattainment to attainment for ozone. Elements of the section 175A maintenance plan include a base year (1993 attainment year) emission inventory for NO_X and VOC, a demonstration of maintenance of the ozone NAAQS with projected emission inventories (including interim years) to the year 2005 for NO_X and VOC, a plan to verify continued attainment, a contingency plan, and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. If the area records a violation of the ozone NAAQS (which must be confirmed by the State), Michigan will implement one or more appropriate contingency measure(s) which are contained in the contingency plan. Appropriateness of a contingency measure will be determined by an urban airshed modeling analysis. The Governor or his designee will select the contingency measure(s) to be implemented based on the analysis and the MDNR's recommendation. The menu of contingency measures includes basic motor vehicle inspection and maintenance program upgrades, Stage I vapor recovery expansion, Stage II vapor recovery, intensified RACT for degreasing operations, NO_X RACT, and RVP reduction to 7.8 psi. Michigan submitted legislation or rules for basic I/M in House Bill No 5016, signed by Governor John Engler on November 13, 1993; Stage I and Stage II in Senate Bill 726 signed by Governor John Engler on November 13, 1993; and RVP reduction to 7.8 psi in House Bill 4898 signed by Governor John Engler on November 13, 1993.

(i) Incorporation by reference.

(A) State of Michigan House Bill No. 5016 signed by the Governor and effective on November 13, 1993.

(B) State of Michigan Senate Bill 726 signed by the Governor and effective on November 13, 1993.

(C) State of Michigan House Bill No. 4898 signed by the Governor and effective on November 13, 1993.

2. Section 52.1174 is amended by adding paragraphs (h) and (i) to read as follows:

§ 52.1174 Control strategy: Ozone.

* * * * *

(h) Approval—On January 5, 1993, the Michigan Department of Natural Resources submitted a revision to the ozone State Implementation Plan for the 1990 base year emission inventory. The inventory was submitted by the State of Michigan to satisfy Federal requirements under section 182(a)(1) of the Clean Air Act as amended in 1990, as a revision to the ozone State Implementation Plan for the Detroit-Ann Arbor moderate ozone nonattainment area. This area includes Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne counties.

(i) Approval—On November 12, 1993, the Michigan Department of Natural Resources submitted a request to redesignate the Detroit-Ann Arbor (consisting of Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne counties) ozone nonattainment area to attainment for ozone. As part of the redesignation request, the State submitted a

maintenance plan as required by 175A of the Clean Air Act, as amended in 1990. Elements of the section 175A maintenance plan include a base year (1993 attainment year) emission inventory for NO_X and VOC, a demonstration of maintenance of the ozone NAAQS with projected emission inventories (including interim years) to the year 2005 for NO_X and VOC, a plan to verify continued attainment, a contingency plan, and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. If the area records a violation of the ozone NAAQS (which must be confirmed by the State), Michigan will implement one or more appropriate contingency measure(s) which are contained in the contingency plan. Appropriateness of a contingency measure will be determined by an urban airshed modeling analysis. The Governor or his designee will select the contingency measure(s) to be implemented based on the analysis and the MDNR's recommendation. The menu of contingency measures includes basic motor vehicle inspection and maintenance program upgrades, Stage I vapor recovery expansion, Stage II vapor recovery, intensified RACT for degreasing operations, NO_X RACT, and RVP reduction to 7.8 psi. The redesignation request and maintenance plan meet the redesignation requirements in sections 107(d)(3)(E) and 175A of the Act as amended in 1990, respectively. The redesignation meets the Federal requirements of section 182(a)(1) of the Clean Air Act as a revision to the Michigan Ozone State Implementation Plan for the above mentioned counties.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.323 the ozone table is amended by revising the entry for the Detroit-Ann Arbor area for ozone to read as follows:

§ 81.323 Michigan.

* * * * *

MICHIGAN—OZONE

Designated areas	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * *	*	*	*	*
Detroit-Ann Arbor Area:				
Livingston County	April 6, 1995	Attainment		
Macomb County	April 6, 1995	Attainment		
Monroe County	April 6, 1995	Attainment		
Oakland County	April 6, 1995	Attainmnet		
St. Clair County	April 6, 1995	Attainment		
Washtenaw County	April 6, 1995	Attainment		
Wayne County	April 6, 1995	Attainment		
* * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

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[FR Doc. 95–5445 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[IL001; FRL–5164–6]

Clean Air Act Final Interim Approval of Operating Permits Program; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by Illinois for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: March 7, 1995.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Jennifer Buzecky, 77 West Jackson Boulevard, Permits and Grants Section AR–18J, Chicago, Illinois 60604, (312) 886–3194.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), and implementing regulations at 40 Code of Federal Regulations (CFR) Part 70 require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On September 30, 1994, EPA proposed interim approval of the operating permits program for Illinois. See 59 FR 49882. The EPA received public comment on the proposal, and compiled a Technical Support Document (TSD) which describes the operating permits program in greater detail. In this notice EPA is taking final action to promulgate interim approval of the operating permits program for Illinois.

II. Final Action and Implications

A. Analysis of State Submission

The EPA received comments from a total of four organizations. The EPA's response to these comments is summarized in this section. Comments

supporting EPA's proposal are not addressed in this notice; however, EPA's response to all comments is available in a document contained in the docket at the address noted in the **ADDRESSES** section above.

1. Section 112(G) Implementation

The EPA received several comments regarding the proposed approval of Illinois' preconstruction permitting program for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations. Two commentors argued that Illinois should not, and cannot, implement section 112(g) until: (1) EPA has promulgated a section 112(g) regulation, and (2) the State has a section 112(g) program in place. The commentors also argued that Illinois' preconstruction review program cannot serve as a means to implement section 112(g) because it was not designed for that purpose. One commentor also asserted that such a regulatory program is unconstitutional because the section 112(g) requirements are vague.

In its proposed interim approval of Illinois' part 70 program, EPA also proposed to approve Illinois' preconstruction review program for the purpose of implementing section 112(g) during the transition period before promulgation of a Federal rule implementing section 112(g). This proposal was based in part on an interpretation of the Act that would require sources to comply with section 112(g) beginning on the date of approval of the title V program, regardless of whether EPA had completed its section 112(g) rulemaking. The EPA has since revised this interpretation of the Act in a Federal Register notice published on February 14, 1995. 60 FR 8333. The revised interpretation postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The revised notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow States time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Illinois must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations.

For this reason, EPA is finalizing its approval of Illinois' preconstruction review program. This approval clarifies that the preconstruction review program is available as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by Illinois of rules established to implement section 112(g). However, since the approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. Furthermore, EPA is limiting the duration of this approval to 18 months following promulgation by EPA of the section 112(g) rule.

The EPA believes that, although Illinois currently lacks a program designed specifically to implement section 112(g), Illinois' preconstruction review program will serve as an adequate implementation vehicle during a transition period because it will allow Illinois to select control measures that would meet MACT, as defined in section 112, and incorporate these measures into a federally enforceable preconstruction permit. Illinois will be able to impose federally enforceable measures reflecting MACT for most if not all changes qualifying as a modification, construction, or reconstruction under section 112(g) because Illinois' preconstruction permitting program is not limited to criteria pollutants. 415 ILCS 5/9.1(d).

Another consequence of the fact that Illinois lacks a program designed specifically to implement section 112(g) is that the applicability criteria found in its preconstruction review program may differ from those in the section 112(g) rule. However, whether a particular source change qualifies as a modification, construction, or reconstruction for section 112(g) purposes during any transition period will be determined according to the final section 112(g) rule. The EPA would expect Illinois to be able to issue a preconstruction permit containing a case-by-case determination of MACT where necessary for purposes of section 112(g) even if review under its own preconstruction review program would not be triggered.

In addition, one commentor incorporated by reference its comments on the proposed section 112(g) rule, and stated that the proposed rule has technical, legal, and constitutional defects that disqualify it as a valid or workable approach to section 112(g) implementation. The EPA believes the appropriate forum for pursuing objections to the legal validity of Federal regulations is by: (1) Submitting comments on a proposed rulemaking during the public comment period for that particular rulemaking, or (2) petitioning for review of the promulgated rule in the D.C. Circuit Court of Appeals. If the commentor has concerns with the final section 112(g) rule, the commentor will have the opportunity to pursue such action once the section 112(g) rule is promulgated.

Two commentors assumed that EPA would delegate the section 112(g) requirements to the State. The EPA wishes to clarify that the implementation of section 112(g) by the State, including case-by-case MACT determinations, is a requirement for approval of a State title V program. In other words, approval of the title V operating permits program confers on the State responsibility to implement section 112(g). Since the requirement to implement section 112(g) lies with the State in the first instance, there is no need for a delegation action apart from the title V program approval mechanism, except where the State seeks approval of a ''no less stringent'' program under 40 CFR part 63 subpart E. EPA's approval of Illinois' program for delegation of section 112 standards as promulgated does not affect this responsibility to implement section 112(g).

2. Variance

EPA received two comments regarding the variance provisions contained in Illinois' existing regulations. The commentors objected to EPA's position that State variances are not recognized by EPA unless a variance is issued in accordance with part 70 procedures. The commentors stated that dismissing all State-issued variances would conflict with part 70. The commentors also stated that while part 70's requirements for compliance schedules do not sanction non-compliance by a source, variances provided by the state are consistent with the recognition of non-complying sources and the requirement for compliance schedules in the permit application.

EPA agrees with the commentors that variances provided by the State could be consistent with the issuance of a part 70 permit. The inclusion of a compliance schedule in a part 70 permit is a part 70 requirement and, therefore, a State variance from the applicable requirements at the time of permit

issuance that is provided to a non-complying source may not be inconsistent with part 70. EPA would not, however, recognize variances that grant relief from the duty to comply with the terms of an issued federally enforceable part 70 permit except where such relief is granted through procedures allowed by part 70. Once again, EPA is not taking any action on Illinois' variance procedures. The Agency is only clarifying that all variances provided by the State for title V sources must be granted in accordance with part 70.

3. Insignificant Activities

Four commentors responded to EPA's proposed concerns regarding Illinois' draft insignificant activities regulations. In response to these comments EPA reviewed the draft regulations a second time. On February 2, 1995, EPA formally received a final copy of these regulations for inclusion in the State's CAAPP submittal. Please see the docket for a more detailed review of the Illinois rule.

All commentors objected to EPA's interpretation that the threshold levels of 1.0 pound per hour (lb/hr) of criteria pollutants and .1 lb/hr of HAP in 35 Illinois Administrative Code (IAC) Part 201.211 are not acceptable. These cut-off rates mentioned above are contained in the State's provision, ''Application for Classification as an Insignificant Activity.'' 35 IAC 201.211. One commentor stated that the more appropriate classification of insignificant activities lies in different sections of the State's regulations. The section referred to by the commentor distinguishes between HAP and non-HAP emissions. For HAP calculations, the rule relies on concentrations of HAPs in the form of raw material fed to an emission unit. 35 IAC 201.209(a)(1)(A)–(C). For non-HAPs, the rule refers to emission units that never exceed .1 lb/hr or .44 tpy. 35 IAC 201.210(a) (2) and (3). Although EPA cannot now determine whether or not the HAP calculations would result in emissions in amounts greater than the significance limits that will ultimately be finalized in the section 112(g) rulemaking, EPA also believes that the non-HAP provisions in 35 IAC 201.210(a) (2) and (3) do not now pose a problem for approval of the State's submittal. The Agency, therefore, is taking no action on these provisions. EPA originally objected to 35 IAC 201.210(a)(1), however, because this provision includes emissions determined to be insignificant according to the provisions in 35 IAC 201.211 (allowing sources to apply for insignificant activities that are granted by IEPA's discretion). The regulatory sections offered by the commentor, therefore, are not entirely dispositive of the issue.

Upon further reflection, EPA generally agrees with the commentors that the rate itself of 1.0 lb/hr of criteria pollutant emission cut-off contained in 35 IAC 201.211 need not be amended for full approval. Emission cut-offs approved for insignificant activities are based upon State-specific circumstances and analysis. One State's cut-offs may not be appropriate for another State's programs due to variations in local factors such as non-attainment areas, State Implementation Plans (SIP), source types, and emissions. EPA believes the State should be given substantial deference in this matter and finds the insignificance levels established by Illinois will not, in and of themselves, interfere with the State's ability to ensure that part 70 sources meet all applicable requirements of the SIP. Although a severe ozone nonattainment area exists in the State, EPA believes that it is reasonable in this case to project that the insignificant levels established in the State of Illinois' regulations will not interfere with its effort to be reclassified as attainment. Illinois believes that this level will not only reduce its administrative burden, but allow it to eventually meet its attainment demonstrations.

The Agency, however, is still concerned with the development of these regulations and continues to believe that interim approval is appropriate for these rules at this time. 35 IAC 201.208 of the State's rule does not meet the requirements of 40 CFR 70.5(c), which requires that an application may not omit information needed to determine the applicability of, or to impose, any applicable requirements, or to evaluate the fee amount required under the schedule approved pursuant to 40 CFR 70.9. These provisions are intended to ensure that sources do not file incomplete permit applications due to inadvertent usage of a State's insignificant activity provisions. In addition, 35 IAC 201.210(b) must be amended to clarify that a source must specifically list in its permit application the activities present at its facility and not just rely on a general statement that denotes the presence of activities.

Although the emission cut-offs for criteria pollutants are not a concern at this time, revisions to the State's insignificant regulations will still be necessary for full approval of the State's program. EPA believes the State must make the following changes for full approval: (1) the language of 201.208 must worded to state that at the time of filing an application, the application must include all necessary information to determine the applicability of or to impose any applicable requirements or fees and (2) 201.210(b) must be amended so that sources specifically list the insignificant activities present at their facilities.

4. Administrative Amendments

EPA received three comments on the inclusion of the State's incorporation of emission trades based upon a SIP-approved trading program into a title V permit based upon the administrative amendment procedure. Two of the commentors requested clarification as to whether EPA intends to subject emissions trading that occurs under an emissions cap established in a part 70 permit to significant modification procedures. One commentor stated that it is not necessary for EPA to consider this provision now since Illinois has no such regulations developed concerning emissions trading.

Responding to the commentors' request for clarification, EPA does *not* interpret part 70 to require states to subject emissions trades that occur under an emissions cap established in a part 70 permit to significant modification procedures. These trades are established by a part 70 permit and, therefore, sources do not need to revise their part 70 permits when utilizing these trading provisions.

Part 70, however, does not allow the use of an administrative permit amendment to accomplish incorporation of emissions trades resulting from the application of an approved economic incentives rule, a marketable permits rule or a generic emissions trading rule into a part 70 permit. 40 CFR 70.7(d). Any substantive change to a permit term or condition must follow the permit revision procedures of part 70. Future part 70 rulemakings may change this requirement, but for the present, EPA can only review State submittals in accordance with the promulgated part 70 rulemaking of July 21, 1992.

Despite the fact that Illinois does not currently have an approved trading program, it is appropriate for EPA to now consider this State legislative provision allowing emission trades to be incorporated through the administrative amendment procedure. EPA cannot approve regulations in a State program that would conflict with provisions in the part 70 regulations.

5. Compliance Certification

Three commentors objected to EPA's proposed interim approval regarding the

State's legislation concerning compliance certification by a responsible official. The Illinois statute requires that applications be certified for truth, accuracy, and completeness by a responsible official in accordance with applicable regulations. 415 ILCS 5/39.5(5)(e). Part 70 requires that certifications be based upon a ''reasonable belief'' or that statements be based upon ''information and belief.'' 40 CFR 70.5(d) and 70.6(c)(1).

EPA agrees with the commentors to the extent that interim approval for this issue is not appropriate. Upon further review, Illinois' legislative authority for certification of responsible officials carries the same meaning as part 70. A responsible official of the permit applicant would presumably need to make some inquiry into the document being certified to ensure that the official's certification meets the requirements of the Illinois statute. In light of this, EPA will remove the compliance certification issue from the items needing further State action for final approval.

6. Enhanced NSR

Three commentors objected to EPA's proposal of interim approval for Illinois' inclusion of preconstruction review permits into part 70 permits via the administrative amendment procedures of part 70. To summarize, all three commentors object to requiring the development of specific regulations that would outline the substantive, procedural and compliance requirements necessary for incorporation of a preconstruction permit into a part 70 permit through the administrative amendment procedure. This incorporation of a preconstruction permit into a part 70 permit is known as ''enhanced new source review (NSR).''

In EPA's proposal, EPA stated that 40 CFR 70.7(d)(1)(v) allows such incorporation only when the State's preconstruction review program meets procedural and compliance requirements substantially equivalent to the requirements of 40 CFR 70.7 and 70.8 and compliance requirements substantially equivalent to those contained in 40 CFR 70.6. To utilize 40 CFR 70.7(d)(1)(v), the state must develop regulations which outline the actual requirements necessary for preconstruction permits to qualify for inclusion in part 70 permits using the administrative amendment procedure and for EPA to approve these regulations as ''substantially equivalent.'' Without these regulations, the public and EPA cannot track the issuance and amendments of part 70 permits to ensure that the permits contain all requirements. The public also needs assurance that a source will not be able to avoid the requirements of the part 70 process through a different permitting program such as preconstruction review.

Although 40 CFR 70.7(d)(1)(v) is not a necessary element of a part 70 program, the State of Illinois submitted a title V permit program that provides for the use of this procedure. EPA, therefore, must determine the adequacy of this aspect of the State's submittal. Because Illinois' existing legislative authority allows the use of enhanced NSR, without any further regulations defining substantially equivalent procedures to 40 CFR 70.6, 70.7 and 70.8, this provision is currently deficient. To cure this deficiency, the State must: (1) develop regulations outlining the exact substantive, procedural and compliance requirements for incorporation of preconstruction permits into part 70 permits and (2) submit these regulations to EPA for review and approval to ensure that these regulations are ''substantially equivalent'' to the part 70 regulations.

415 ILCS 5/39.5(13)(c)(v), therefore, will remain on the interim approval list until the State corrects this deficiency. Until regulations are developed outlining the elements of an enhanced NSR program, the State will be expected to interpret ''substantially equivalent'' in 415 ILCS 5/39.5(13)(c)(v) consistently with part 70.

7. Knowingly Tampering with Monitoring Devices

Two commentors objected to EPA's inclusion of Illinois' statutory provision concerning enforcement of knowingly tampering with any ''monitoring device or record.'' 415 ILCS 5/44(j)(4)(D). Part 70 requires that criminal fines be imposed upon one who knowingly renders inaccurate any required ''monitoring device or method.'' 40 CFR 70.11(a)(3)(iii). One commentor stated that Illinois' enforcement provision is identical in meaning and effect to the language in part 70 and is appropriate in the context of Illinois' law.

Upon further review, EPA agrees with the commentors that the Illinois legislative provisions for enforcement for knowingly tampering with monitoring devices or records is equivalent in meaning to the requirements of part 70. EPA will, therefore, remove from the list of interim approval issues the requirement that the State make a legislative change to its enforcement provisions.

8. Prompt Reporting of Deviations

EPA received two comments supporting its review of Illinois' submittal concerning the prompt reporting of deviations from permit conditions required by 40 CFR 70.6(a)(3)(iii)(B). Because Illinois did not include a definition of ''prompt'' in its legislation or regulations, an acceptable alternative is for the State to define ''prompt'' in each part 70 permit. This definition will be dependent upon the individual circumstances of each source.

The commentors, however, believe that the EPA must revise several of its earlier interim approval notices, in which the Agency conditioned final approval on including a definition of prompt in the State program, in order to provide a consistent application of the appropriate interpretation of its rules. EPA is not aware of any program approval notices that need to be corrected at this time.

B. Additional Issues

The Illinois Environmental Protection Agency (IEPA) informed the EPA, after publication of the proposed interim approval of the State's title V program, that the State cannot meet its January 1, 1995, commitment for an effective acid rain program. In light of the structure of existing state legislation, in order for an eventual full approval of the State's CAAPP, the State must incorporate by reference the Federal acid rain program into the State's existing CAAPP legislation. 415 ILCS 5/39.5(17). IEPA requested an extension of its commitment to incorporate by reference the Federal program so that the State can combine this incorporation by reference with the amendments to its CAAPP legislation required for interim approval. This presentation to the legislature would occur in the January, 1996, legislative session, rather than the January, 1995, session originally contemplated. IEPA argues that amending its CAAPP legislation once rather than twice would not interfere with the State's implementation of Phase II of the Acid Rain Program.

On January 9, 1994, EPA received a letter from Bharat Mathur, Chief, Bureau of Air, IEPA, to Stephen Rothblatt, Chief, Regulation Development Branch, EPA Region 5, detailing why the State cannot meet its January 1, 1995, commitment and reiterating its commitment to implement the Acid Rain program.

Due to the State's existing enabling legislation for titles IV and V and its commitment to implement the acid rain program in the interim period between

this final notice and an effective incorporation by reference of the Federal acid rain program into the State's legislation, EPA believes an extension of the State's commitment to adopt acid rain legislation is appropriate. Existing State legislation allows the State to collect applications for Phase II affected source and allows the State to process these applications and evidences the State's ability to implement the Federal acid rain program in accordance with all Federal regulations. 415 ILCS 5/39.5(17). Until the State officially incorporates the Federal acid rain program by reference, EPA expects the State to use its broad legislative authority for the receipt and processing of phase II applications in accordance with all Federal regulations.

C. Final Action

The EPA is promulgating interim approval of the operating permits program submitted by Illinois on November 15, 1993. The State must make the following changes to receive full approval:

1. The State must correct all deficiencies in its insignificant activities regulations (refer to previous discussion of insignificant activities for actual changes);

2. The State must amend 415 ILCS 5/39.5(13)(c)(vi) to require the use of the significant modification procedure to incorporate emission trades into a CAAPP permit;

3. The State must develop regulations defining enhanced NSR for the purposes of implementing 40 CFR 70.7(d)(1)(v); and

4. Due to the State's present legislative provisions concerning the Acid Rain program, the State must incorporate by reference the federal regulations for implementation of the acid rain program.

The scope of Illinois' part 70 program approved in this notice applies to all part 70 sources (as defined in the approved program) within the State of Illinois, except any sources of air pollution over which an Indian Tribe has jurisdiction. See, *e.g.*, 59 FR 55813, 55815–55818 (Nov. 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

This interim approval, which may not be renewed, extends until March 7, 1997. During this interim approval period, the State of Illinois is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in Illinois. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If the State of Illinois fails to submit a complete corrective program for full approval by September 9, 1996, EPA will start an 18-month clock for mandatory sanctions. If Illinois then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that Illinois has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the State of Illinois, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determined that Illinois had come into compliance. In any case, if, six months after application of the first sanction, Illinois still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves Illinois' complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State of Illinois has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of Illinois, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that Illinois has come into compliance. In all cases, if, six months after EPA applies the first sanction, Illinois has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if Illinois has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to the Illinois program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for Illinois upon interim approval expiration.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to Part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the Part 70 program.

The EPA is also promulgating approval of Illinois' federally enforceable state operating permit program (FESOP) for the purposes of creating federally enforceable limitations on the potential to emit of Hazardous Air Pollutants (HAP) regulated under section 112 of the CAA. The EPA is approving this program as meeting the criteria articulated in the June 28, 1989, Federal Register notice for State operating permit programs to establish limits federally enforceable on potential to emit and the criteria established in section 112(l).

The EPA is also promulgating approval of Illinois's preconstruction permitting program found in 35 Ill. Adm. Code 201–203, under the authority of title V and part 70 solely for the purpose of implementing section 112(g) to the extent necessary during the period between final promulgation of section 112(g) and adoption of any necessary State rules to implement EPA's section 112(g) regulations. However, since the approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. Although section 112(l) generally provides authority for approval of State air programs to implement section 112(g), title V and section 112(g) provide authority for this limited approval because of the direct linkage between

the implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purposes of any other provision under the Act, for example, section 110. The duration of this approval is limited to 18 months following promulgation by EPA of section 112(g) regulations, to provide Illinois adequate time for the State to adopt any necessary regulations consistent with the Federal requirements.

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval, including four public comments received and reviewed by EPA on the proposal, are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Effective Date

An administrative agency engaging in rulemaking must comport with the requirements of section 553 of the Administrative Procedures Act (5 U.S.C.A., chapter 5). Section 553 requires that an agency allow at least 30 days from the date of publication before the effective date of a substantive rulemaking. If, however, good cause can be shown, then the agency may impose an effective date of less than 30 days after publication. Good cause exists to initiate an effective date less than 30 days after publication when it is in the public interest and the shorter time period does not cause prejudice to those regulated by the rule. *British American Commodity Options Corp.* v. *Bagley*, 552 F.2d 482, at 488–89 (1977). For the reasons explained below, EPA believes that good cause exists for the effective date of Illinois' CAAPP to be the date of publication of this rulemaking.

An immediate effective date is in the public's interest for several reasons. The requirement for sources to submit CAAPP applications to the State is contingent in the Illinois regulations upon the effective date of the program, not the date of publication. All sources subject to title V in Illinois must submit their title V applications to the state within one year of the effective date of the State's program. Likewise, the collection of fees, hiring of permit engineers and analysis of applicants' permits cannot begin until the State's program is effective. Illinois' program, therefore, should be adopted without any further delay inasmuch as the public has been without the protection of this comprehensive regulatory program and because any further delay would not serve the public interest.

Although it is in the public's interest to commence Illinois' title V program upon the date of publication, EPA must ensure that this action will not have any prejudicial effects upon the regulated community. *Rowell* v. *Andrus*, 631 F.2d 699, at 702–703 (1980). For example, EPA must ensure that the regulated community has sufficient notice of this rulemaking and ample opportunity to comment. EPA believes that all interested parties have had sufficient notice of this rulemaking and ample time to comment. The development of the State's CAAPP occurred over the last few years. As such, it contains a combination of legislation and regulations. These regulations were all previously subjected to public comment at the State level. The State's legislation has been effective and fully enforceable as a matter of State law since September 26, 1992, and the first set of State CAAPP regulations became effective on June 10, 1993. Illinois' CAAPP program, therefore, has been fully effective and enforceable as a matter of State law for over the past year. In addition, EPA also subjected these same regulations and legislation to public comment when it published its proposed interim approval of the State's CAAPP on September 30, 1994. From the preceding facts, it is obvious that all interested parties have had ample time both to participate in the rulemaking process and to ready themselves to comply with this program.

List of Subjects in 40 CFR Part 70

Environmental Protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: February 24, 1995.

Valdas V. Adamkus,

Regional Administrator.

40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. sections 7401 et seq.

2. Appendix A to part 70 is amended by adding the entry for Illinois in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Illinois

(a) The Illinois Environmental Protection Agency: submitted on November 15, 1993; interim approval effective on March 7, 1995; interim approval expires March 7, 1997.

(b) Reserved

* * * * *

[FR Doc. 95–5516 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC28

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Gesneria pauciflora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Gesneria pauciflora* (no common name) to be a threatened species pursuant to the Endangered Species Act (Act) of 1973, as amended. This small shrub is endemic to Puerto Rico, where only three populations are known to exist in the western mountains in the municipalities of Maricao and Sabana Grande. The species is threatened by the potential for natural disasters and modification of its highly restricted habitat. This final rule extends the Act's protection and recovery provisions to *Gesneria pauciflora.*

EFFECTIVE DATE: April 6, 1995.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box

491, Boquerón, Puerto Rico 00622; and at the Service's Southeast Regional Office, 1875 Century Boulevard, Atlanta, Georgia 30345.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander at the Caribbean Field Office address (809/851–7297).

SUPPLEMENTARY INFORMATION:

Background

Gesneria pauciflora is a small shrub currently known from only three populations in the western mountains of Puerto Rico. It was discovered by the German botanical collector Paul Sintenis on December 3, 1884, at ''Indiera Fria'' in Maricao, Puerto Rico. Numerous other botanists collected the plant from this same location throughout the years. A second population was discovered recently in the municipality of Sabana Grande, near the headwaters of the Seco River and a third from a small tributary of the Lajas River. Herbarium specimens indicate that the species has also been collected in the past from the Yaguez River and from Cerro Las Mesas (D. Kolterman and G. Breckon, pers. comm.). Population estimates are difficult due to the plant's habit of growing in dense mats; however, the largest population (Maricao River) has been estimated at approximately 1,000 individuals and the second (Seco River) at 50 (Proctor 1991; CPC 1992). Plants are known to occur in clusters of few to numerous individuals. Each population consists of clusters or colonies of individuals. D. Kolterman and G. Breckon (pers. comm.) have indicated that the population of the Maricao River consists of 12 colonies; the Seco River of 3; and the Lajas River of 2.

Gesneria pauciflora is a small gregarious shrub which may reach 30 centimeters in height and 8 millimeters in diameter. Stems may be erect or decumbent and the bark is smooth, gray-brown, and glabrous. The leaves are alternate and the terete or flattened petioles are from 2 to 7 millimeters long. Leaf blades are shaped like a narrow trowel, 2.8 to 9.2 centimeters long and .9 to 2.3 centimeters wide, membranous, dark green and glossy above, and pilose along the prominent veins. The margin is subentire toward the cuneate base and serrate to sublobate above. The inflorescences are one to few-flowered and the peduncles from 6.1 to 15.3 centimeters long and slightly curved. The pedicels are 1 to 2 centimeters long, reddish-brown, and pilose to glabrescent. The corolla is tubular, curved, 2 to 2.3 centimeters long, 4 millimeters wide at the base, narrowing to 3 millimeters but widening to 5 millimeters at the middle and again narrowing to 4 millimeters at the mouth. The 5-lobed corolla is yellow to yellow-orange and densely pilose outside but glabrous inside. The fruit is a capsule, approximately 4 millimeters long and wide, gray-brown, glabrescent, with 5 to 10 not prominent ridges (Proctor 1991).

At all known localities the species is found growing in rocky stream beds on wet serpentine rock, where water is constantly seeping. The plants may be submerged for a short time during periods of high water (D. Kolterman and G. Breckon, pers. comm.). The Maricao and Seco River localities are found within the Maricao Commonwealth Forest, managed by the Puerto Rico Department of Natural and Environmental Resources. However, the Lajas River population lies at the edge of the forested area and it is not certain whether the site falls within Commonwealth Forest property (D. Kolterman and G. Breckon, pers. comm.). The largest population is located in an area of steep unstable slopes and may be threatened by landslides and flood damage. Forest management practices such as trail construction may adversely affect the species. The Center for Plant Conservation (1992) assigned *Gesneria pauciflora* a priority 1 ranking, indicating that the plant could possibly go extinct in the wild within the next 5 years.

Previous Federal Action

Gesneria pauciflora was recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps 1978). The species was included among the plants being considered as endangered or threatened by the Service as published in the Federal Register notice of review dated December 15, 1980 (45 FR 82480); the November 28, 1983 update (48 FR 53680), the revised notice of September 27, 1985 (50 FR 39526), and the February 21, 1990 (55 FR 6184) and September 30, 1993 (58 FR 51144) notices of review. The species was designated as a category 1 species (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in the notices of review published on February 21, 1990, and September 30, 1993.

In a notice published in the Federal Register on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of Section 4(b)(3)(A) of the Act, as amended in 1982. Beginning in October 1983, and in each October thereafter, the Service found that listing *Gesneria pauciflora* was warranted but precluded by other pending listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. A proposed rule to list *Gesneria pauciflora*, published on February 18, 1994 (59 FR 8165), constituted the final 1-year finding for the species in accordance with Section 4(b)(3)(B)(ii) of the Act.

Summary of Comments and Recommendations

In the February 18, 1994, proposed rule and associated notifications, all interested parties were requested to submit factual reports of information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting general comment was published in the ''El Dia'' on March 18, 1994. Four letters of comment were received and discussed below. A public hearing was neither requested nor held.

The Puerto Rico Department of Natural and Environmental Resources, both the Terrestrial Ecology Section and the Natural Heritage Program, supported the listing of the species as threatened.

The Puerto Rico Planning Board stated that although they did not have any proposed projects before them at this time that might affect the species, they would circulate the information within the agency in order that it could be considered upon receipt of projects.

Dr. Duane Kolterman and Dr. Gary Breckon provided additional information on a recently discovered population along a tributary of the Lajas River in or near the Maricao Commonwealth Forest as well as on historical records, biological information and threats. They state that survival of the colonies is dependent on water flow, water level, siltation and land slippage and that any major clearing or water removal upstream or water impoundment downstream may potentially harm the species. They stated that because of the absence of a management program in the Commonwealth Forest and the apparent loss of the species at two historical collection sites, the species should be designated as endangered rather than threatened. The Service, however, believes that current threats to the species are not imminent and that a classification of threatened is more appropriate.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Gesneria pauciflora* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Gesneria pauciflora* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Gesneria pauciflora* is known from only three populations in western Puerto Rico. Although at least two of the populations are found within the Maricao Commonwealth Forest, a management plan for the Forest has not been prepared. Activities within the Forest may increase the potential for erosion of the steep unstable slopes where the species occurs. Management practices such as trail construction may directly affect the species. Because the plant has not been found more than 1 meter above or away from the water, any water removal upstream or water impoundment downstream may adversely affect this plant (D. Kolterman and G. Breckon, pers. comm.). Due to water shortages experienced by the whole island, the number of proposed water intakes has increased, which would result in a lower flow of water.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although an attractive plant, taking for these purposes has not been a documented factor in the decline of this species.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of this species.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Gesneria pauciflora* is not yet on the Commonwealth list. Federal listing will provide immediate protection and, when the species is ultimately placed on the Commonwealth list, enhance its protection and possibilities for funding needed research.

E. *Other natural or manmade factors affecting its continued existence.* One of the most important factors affecting the continued survival of this species is its limited distribution. Because so few individuals are known to occur in a limited area, the magnitude of threat is extremely high. Landslides, floods and storm damage are natural occurrences that may affect the steep, unstable slopes associated with the species' habitat.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Gesneria pauciflora* as threatened. Three populations are currently known, the largest one of which may contain as many as 1,000 individuals; however, at least two occur on land managed by the Commonwealth. Although limited in distribution, the species does not appear to be in imminent danger of becoming extinct. Therefore, threatened rather than endangered status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the ''Critical Habitat'' section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service's regulations (50 CFR 424.12(a)(1) state that designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) Such designation of critical habitat would not be beneficial to the species.

The Service finds that designation of critical habitat is not prudent for this species due to the potential for taking and vandalism. The number of individuals of *Gesneria pauciflora* is sufficiently small that vandalism and collection could seriously affect the survival of the species. Publication of critical habitat descriptions and maps in the Federal Register would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will also be addressed through the recovery process and through the Section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, required Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for *Gesneria pauciflora,* as discussed above. Federal involvement may occur through the use of federal funds (U.S. Department of Agriculture) for forest management practices.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any threatened plant, transport it in interstate or foreign commerce in the course of commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species

are exempt from these prohibitions provided that a statement of ''cultivated origin'' appears on their containers. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any Commonwealth law or regulation, including Commonwealth criminal trespass law. Certain exceptions apply to agents of the Service and Commonwealth conservation agencies. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

It is the policy of the Service published in the Federal Register on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time of listing those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed or ongoing activities. Two of the three known populations of *Gesneria pauciflora* are located in the Maricao Commonwealth Forest. The third population lies on the border of the Maricao Forest and the ownership of this site is uncertain. Since there is no Federal ownership, and the species is not currently in trade, the only potential section 9 involvement would relate to removing or damaging the plant in knowing violation of Commonwealth law, or in knowing violation of Commonwealth criminal trespass law. Section 15.01(b) of the Commonwealth ''Regulation to Govern the Management of Threatened and Endangered Species in the Commonwealth of Puerto Rico,'' states ''It is illegal to take, cut, mutilate, uproot, burn or excavate any endangered plant species or part thereof within the jurisdiction of the Commonwealth of Puerto Rico.'' The Service is not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing and result in a violation of section 9.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Caribbean Office (see **ADDRESSES** section). Requests for copies of the regulations on listed species and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Regional Permit Coordinator, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (404/697–7110).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

Ayensu, E.S., and R.A. DeFilipps. 1978. Endangered and threatened plants of the United States. Smithsonian Institution and World Wildlife Fund, Washington, D.C. xv + 403 pp.

Center for Plant Conservation. 1992. Report on the rare plants of Puerto Rico. Center for Plant Conservation, Missouri Botanical Garden, St. Louis, Missouri.

Proctor, G. R. 1991. Status report on *Gesneria pauciflora* Urban. *In* Puerto Rican plant species of special concern: status and recommendations. Publicacion Cientifica Miscelanea No. 2, Department of Natural Resources, San Juan, Puerto Rico.

Author

The primary author of this final rule is Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under flowering plants, to the list of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	*
Gesneria pauciflora	None	USA (PR)	*Gesneriaceae*	T	578	NA	NA
*	*	*	*	*	*	*	*

Dated: February 15, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–5508 Filed 3–6–95; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 022895D]

Groundfish of the Bering Sea and Aleutian Islands Area; Inshore Component Pollock Fishery in the Bering Sea Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first allowance of the pollock total allowable catch (TAC) for the inshore component in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 1, 1995, until 12 noon, A.l.t., August 15, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the first seasonal allowance of pollock for the inshore component in the BS was established by the final groundfish specifications (60 FR 8479, February 14, 1995) as 167,344 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), has determined in accordance with § 675.20(a)(8), that the first allowance of pollock TAC for the inshore component in the BS soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 162,344 mt with consideration that 5,000 mt will be taken as incidental catch in directed fishing for other species in the BS. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the BS.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 1, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–5434 Filed 3–1–95; 3:56 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 44
Tuesday, March 7, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T–015A]

North Carolina State Plan: Proposed Revision to State Staffing Benchmarks; Request for Comments

AGENCY: Department of Labor, Occupational Safety and Health Administration (OSHA).

ACTION: Proposed revision to State compliance staffing benchmarks; request for written comments.

SUMMARY: This document gives notice of the proposed revision of compliance staffing benchmarks (i.e., the number of compliance personnel necessary to assure a ''fully effective'' enforcement effort) applicable to the North Carolina State plan. North Carolina's benchmarks of 83 safety inspectors and 119 industrial hygienists were originally established in April 1980 in response to the U.S. Court of Appeals decision in *AFL–CIO* v. *Marshall*, 570 F. 2d 1030 (D.C. Cir. 1978), and revised on January 17, 1986 (51 FR 2481) to 50 safety inspectors and 27 industrial hygienists. The North Carolina State plan has reconsidered the information utilized in its initial revision of the State's 1980 benchmarks and determined that changes in local conditions and improved inspection data warrant further revision of its benchmarks to 64 safety inspectors and 50 industrial hygienists. OSHA is soliciting written public comments to afford interested persons an opportunity to present their views regarding whether or not the proposed revised benchmarks for North Carolina will provide the State with sufficient compliance personnel necessary to assure a ''fully effective'' enforcement effort and, consequently, should be approved.

DATES: Written comments must be received by April 11, 1995.

ADDRESSES: Written comments should be submitted, in quadruplicate, to the Docket Officer, Docket No. T–015A, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7894.

FOR FURTHER INFORMATION CONTACT: Richard Liblong, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3637, 200 Constitution Avenue NW., Washington, DC 20210, (202) 219–8148.

SUPPLEMENTARY INFORMATION:

Background

Section 18 of the Occupational Safety and Health Act of 1970 (''the Act,'' 29 U.S.C. 651 *et seq.*) provides that States which desire to assume responsibility for developing and enforcing occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Section 18(c) and among these criteria is the requirement that the State's plan provide satisfactory assurances that the State agency or agencies responsible for implementing the plan have ''* * * the qualified personnel necessary for the enforcement of * * * standards,'' 29 U.S.C. 667(c)(4).

A 1978 decision of the U.S. Court of Appeals and the ensuing implementing order issued by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall*, C.A. No. 74–406) interpreted this provision of the Act to require States operating approved State plans to have sufficient compliance personnel (safety inspectors and industrial hygienists) necessary to assure a ''fully effective'' enforcement effort. The Assistant Secretary of Labor for Occupational Safety and Health (the Assistant Secretary) was directed to establish ''fully effective'' compliance staffing levels, or benchmarks, for each State plan.

In 1980 OSHA submitted a Report to the Court containing these benchmarks and requiring North Carolina to allocate 83 safety and 119 health compliance personnel to conduct inspections under the plan. Attainment of the 1980 benchmark levels or subsequent revision thereto is a prerequisite for State plan final approval consideration under section 18(e) of the Act.

Both the 1978 Court Order and the 1980 Report to the Court explicitly contemplates subsequent revisions to the benchmarks in light of more current data, including State-specific information, and other relevant considerations. In August 1983, OSHA and the State plan representatives initiated a comprehensive review of the 1980 benchmark and developed a formula that each State could use to revise its benchmarks when circumstances warranted such revision. (A complete discussion of both the 1980 benchmarks and the benchmark revision process is set forth in the January 16, 1985 Federal Register (50 FR 2491) regarding the Wyoming occupational safety and health plan.)

The State of North Carolina participated in this benchmark revision process and, in September 1984, requested that the Assistant Secretary approve revised compliance staffing levels of 50 safety and 27 health compliance officers for a ''fully effective'' program responsive to the occupational safety and health needs and circumstances in the State. These revised benchmarks were approved by the Assistant Secretary on January 17, 1986 (51 FR 2481). In March 1989 the North Carolina House Appropriations Committee of the North Carolina General Assembly passed a resolution instructing the Commissioner of Labor to renegotiate the appropriate number of occupational safety and health compliance officers with OSHA. In June 1990 the State of North Carolina requested that the Assistant Secretary approve revisions to its 1984 compliance staffing benchmark levels which the State found to be more reflective of current occupational safety and health needs and circumstances within the State.

In September 1991, a catastrophic fire occurred at a poultry processing plant in North Carolina, resulting in the reinstitution of limited Federal concurrent jurisdiction and a special Federal evaluation of the State's occupational safety and health operations. The revision of North Carolina's benchmarks was suspended during this time. Significant legislative and budgetary changes were made in the North Carolina State program and, for Fiscal Year 1995, the State authorized compliance staffing of 64 safety and 51 health inspectors. The North Carolina Department of Labor has requested that the Assistant Secretary

resume consideration of State's proposed revision of its benchmarks at this time.

The North Carolina plan, which was granted initial State plan approval on February 1, 1973 (38 FR 3041), is administered by the North Carolina Department of Labor. The exercise of concurrent Federal enforcement authority was suspended in North Carolina on February 20, 1975, with the signing of an Operational Status Agreement (April 15, 1975, 40 FR 16843). Limited Federal enforcement authority was reasserted on October 14, 1991 (56 FR 55193), but it is anticipated that this authority will be suspended in the near future. The plan was certified as having satisfactorily completed all of its developmental commitments on October 5, 1976 (41 FR 43901).

Proposed Revision of Benchmarks

In June 1990, the North Carolina Department of Labor (the designated agency or ''designee'' in the State) completed, in conjunction with OSHA, a review of the compliance staffing benchmarks approved for North Carolina in 1986. In accord with the formula and general principles established by the joint Federal/State task group for the revision of the 1980 benchmarks, North Carolina reassessed the staffing necessary for a ''fully effective'' occupational safety and health program in the State. This reassessment resulted in a proposal, contained in supporting documents, of revised staffing benchmarks of 64 safety and 50 health compliance officers.

The proposed revised safety benchmark contemplates biennial general schedule inspection of all private sector manufacturing establishments with greater than 10 employees (based upon a computerized summary, by industry and size group, utilizing the 1989 Dun and Bradstreet listing of employers for North Carolina and Federal data on North Carolina's lost workday case rates for 1988) in Standard Industrial Classifications whose Lost Workday Case Injury Rate is higher than the overall State private sector rate (as determined by the Bureau of Labor Statistics' (BLS) Annual Occupational Injury and Illness Survey). The State has historically spent an average of 12.4 hours on such inspections, and each State safety inspector is able to devote 1,440 hours annually to actual inspection activity based on State personnel practices. A total of 4,870 establishments have been added to the initial general schedule safety inspection universe of 3,216 establishments based upon the State's analysis of past injury and inspection experience to identify those additional employers or groups of employers most likely to have hazards that could be eliminated by inspection. In addition, inspection resources are allocated to coverage of mobile (e.g., construction) and public employee (State and local government) work sites, response to complaints and accidents, and follow-up inspections to ascertain compliance, based upon recent historical experience and an assessment of proper safety coverage in the State of North Carolina.

The proposed revised health benchmark contemplates general schedule inspection coverage once every three years of all private sector manufacturing establishments with greater than 10 employees (based upon a computerized summary utilizing the 1984 County Business Patterns and the 1987 Dun and Bradstreet listings for North Carolina) in the 150 top high hazard Standard Industrial Classifications (SICs) in the State having the highest likelihood of exposure of health hazards. These SICs are determined by a health ranking system utilizing data from the National Occupational Hazards Survey (NOHS), as published in 1977, which assesses the potency and toxicity of substances in use in the State. The State has historically spent an average 31.85 hours on such inspections, and each health compliance officer is able to devote 1,504 hours annually to actual inspection activity, based upon State personnel practices. A total of 2,955 establishments have been added to the initial general schedule health inspection universe of 2,028 establishments based upon the State's knowledge gained from inspection experience and other data on the extent of employee exposure to and use of toxic substances and harmful physical agents by individual employers or groups of employers, and the extent to which hazardous exposures can be eliminated by inspection. In addition, inspection resources are allocated to coverage of mobile and public employee (State and local government) work sites, response to complaints and accidents, and follow-up inspections to ascertain compliance, based on recent historical experience and an assessment of proper health coverage in the State of North Carolina.

OSHA has reviewed the State's proposed revised benchmarks and supporting documentation, prepared a narrative describing the State's submission, and determined that the proposed compliance staffing levels appear to meet the requirements of the Court in *AFL–CIO* v. *Marshall* and provide for compliance staff sufficient to ensure a ''fully effective enforcement program.''

Effect of Benchmark Revision

Consistent with the 1978 Court Order in *AFL–CIO* v. *Marshall* and the procedures for implementation of benchmarks described by OSHA in the 1980 Report to the Court, if the proposed revised benchmarks are approved by OSHA, the State must allocate a sufficient number of safety and health enforcement staff to meet the revised benchmarks in order to receive final approval under section 18(e) of the Act. The proposed revised benchmarks of 64 safety and 50 health compliance officers meet North Carolina's Fiscal Year 1995 allocated compliance positions of 64 safety and 51 health officers. (Of those allocated positions, 30 safety and 40 health inspectors are completely funded by the State; the remainder are funded on a 50/50 basis with State and Federal funds.) OSHA does not anticipate any significant increase in its appropriations whereby it would be able to provide 50 percent Federal funding for North Carolina to meet its proposed revised staffing benchmarks.) Approval of the revised benchmarks would be accompanied by an amendment to 29 CFR part 1952, Subpart I, which generally describes the North Carolina plan and sets forth the State's revised safety and health benchmark levels.

Documents of Record

A comprehensive document containing the proposed revision to North Carolina's benchmarks, including a narrative of the State's submission and supporting statistical data has been made a part of the record in this proceeding and is available for public inspection and copying at the following locations:

Docket Office, Docket No. T–015A, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NE., Washington, D.C. 20210.

Regional Administrator—Region IV, U.S. Department of Labor, OSHA, 1371 Peachtree Street NE., Atlanta, Georgia 30367.

North Carolina Department of Labor, 319 Chapanoke Road, Raleigh, North Carolina 27603.

In addition, to facilitate informed public comment, an informational record has been established in a separate docket (No. T–018) containing background information relevant to the benchmark issue in general and the current benchmark revision process. This information docket includes, among other material, the 1978 Court of Appeals decision in *AFL–CIO* v.

Marshall, the 1978 implementing Court Order, the 1980 Report to the Court, and a report describing the 1983–1984 benchmark revision process. Docket Number T–018 is available for public inspection and copying at the Docket Office of the U.S. Department of Labor, Room N–2625.

Public Participation

OSHA is soliciting public participation in its consideration of the approval of the revised North Carolina benchmarks to assure that all relevant information, views, data and arguments are available to the Assistant Secretary during this proceeding. Members of the public are invited to submit written comments in relation to whether the proposed revised benchmarks will provide for a fully effective enforcement program for North Carolina in accordance with the Court Order in *AFL–CIO* v. *Marshall*. Comments must be received on or before April 11, 1995, and be submitted in quadruplicate to the Docket Office, Docket No. T–015A, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Written submissions must be directed to the specific benchmarks proposed for North Carolina and must clearly identify the issues which are addressed and the positions taken with respect to each issue.

All written submissions as well as other information gathered by OSHA will be considered in any action taken. The record of this proceeding, including written comments and all material submitted in response to this notice, will be made available for public inspection and copying in the Docket Office, Room N–2625, at the previously mentioned address, between the hours of 8:15 a.m. and 4:45 p.m.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902, Secretary of Labor's Order No. 1–90 (55 FR 9033))

Signed at Washington, DC, this 28th day of February 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–5503 Filed 3–6–95; 8:45 am]

BILLING CODE 4510–26–M

POSTAL SERVICE

39 CFR Part 111

Special Bulk Third-Class Eligibility Restrictions

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements provisions of Public Laws 103–123 and 103–329, the Treasury, Postal Service, and General Government Appropriations Acts for 1994 and 1995, respectively. The proposed rule is necessary to clarify and implement further restrictions on the use of special bulk third-class rates.

DATES: Comments must be received on or before April 6, 1995.

ADDRESSES: Written comments should be mailed or delivered to Manager, Mailing Standards, USPS Headquarters, 475 L'Enfant Plaza SW., Washington, DC 20260–2419. Copies of all written comments will be available for inspection and photocopying from 9 a.m. to 4 p.m., Monday through Friday, in Room 6800 at the above address.

FOR FURTHER INFORMATION CONTACT: Ernest J. Collins, (202) 268–5316.

SUPPLEMENTARY INFORMATION: On October 28, 1993, the President signed into law Public Law 103–123, the Treasury, Postal Service, and General Government Appropriations Act for 1994. Title VII of the Act, the Revenue Forgone Reform Act, amended 39 U.S.C. 3626 by adding provisions to subsections (j) and new subsection (m) (1993 amendments). These sections add further restrictions on the use of special bulk third-class postage rates by qualified organizations. Specifically, the law makes certain types of advertisements, promotions, and offers, as well as some products, ineligible to be mailed at the special bulk third-class rates. The final rule implementing the new statutory restrictions was published by the Postal Service on May 5, 1994, with an implementation date of September 4, 1994. It was subsequently delayed indefinitely by notice in the Federal Register (59 FR 39967) on August 5, 1994.

On September 30, 1994, the President signed into law Public Law 103–329, the Treasury, Postal Service, and General Government Appropriations Act for 1995 (1994 amendment), amending provisions of Public Law 103–123. The amendment creates an exception to the 1993 amendments for advertisements printed in materials that meet the content requirements for periodical publications as prescribed by the Postal Service.

The 1993 amendments established new content-based restrictions on matter eligible for special bulk third-class rates. In order for material that advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of any product or service to qualify for mailing at the special bulk third-class rates, the sale of the product or the providing of the service must be substantially related to the exercise or performance by the organization of one or more of the purposes constituting the basis for the organization's authorization to mail at such rates. The determination whether a product or service is substantially related to an organization's purpose is to be made in accordance with standards established under the Internal Revenue Code. The amendments also added restrictions on the mailing of products at the special bulk third-class rates.

The 1994 amendment provides that advertisements mailed at the special bulk third-class rates need not meet the substantially related test if the material of which the advertisement is a part meets the content requirements of a periodical publication, as specified by the Postal Service. The 1994 amendment does not affect the restrictions on the mailing of products established in the 1993 amendments.

This proposal republishes for comment the rules adopted on May 5, 1994, with certain changes. The major change is the addition of new sections E370.5.4(d)(2) and 5.8 of the Domestic Mail Manual (DMM) that implement the new exception to the restrictions in the 1993 amendments. Specifically, the new rule provides that the 1993 amendments do not apply to advertisements for products or services that appear in third-class material meeting the content requirements for periodical publications. These content requirements are listed in DMM E370.5.8.

Other changes from the rules published May 5, 1994, include the following. Several sections in the DMM have been renumbered to accommodate the addition of new DMM E370.5.8; section 5.7(c) has been deleted. This provision excluded certain material in newsletters and other publications from the new advertising restrictions. Because the publications that were intended to benefit from the provision are among those that are expected to benefit from the new 1994 exception, this section has been deleted as unnecessary and potentially confusing. Products and services advertised in materials meeting the content requirements for a periodical

publication are mailable at the special bulk third-class rates regardless of whether their sale or provision is substantially related to the purposes of the qualified organization. (This proposed rule change does not affect the prohibition on mailing advertisements for affinity, credit, debit, or charge cards; insurance policies; and travel arrangements.) Also, the cost of a low-cost item has been adjusted for cost of living. Editorial changes, including the consolidation of provisions and deletion of unnecessary or redundant provisions, have been proposed in several sections for the purpose of clarity. These editorial changes are not intended to make substantive changes from the rules adopted on May 5, 1994.

As a reminder, mailers should remain aware that the restrictions in proposed DMM E370.5.4(d) do not apply unless the material to be mailed ''advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of'' a product or service. Other material is not prohibited under this restriction. This includes certain acknowledgments and ''permissible references'' described in current DMM E370.5.6 (which would be renumbered as DMM E370.5.7 under this proposal). It also includes public service announcements that are not considered to be advertising under postal standards. This policy is set forth in DMM E211.11.2; a new definition of public service announcements has recently been adopted by the Postal Service in the Federal Register (59 FR 10021) on February 23, 1995. The determination whether other material may come within the restrictions in DMM E370.5.4(d) must be made on a case-by-case basis. For example, the Postal Service has received inquiries concerning material containing prize offers. If the reader is not required to make a purchase in order to be eligible for a prize, the material is not considered to be an advertisement or other item subject to section DMM E370.5.4(d). The Postal Service understands that sweepstakes announcements generally involve such arrangements. Where an individual is only eligible for a prize or premium if a purchase is made, the matter would generally be considered under the provisions of DMM E370.5.4(d).

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Postal service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. In the Domestic Mail Manual, renumber sections E370.5.6; 5.7; 5.8, and 5.9 as E370.5.7; 5.9; 5.12, and 5.11, respectively.

3. In the Domestic Mail Manual, section E370 is amended by adding 5.4(d), 5.6, 5.8, and 5.10. The proposed text is as follows:

E—Eligibility

* * * * *

E370 Special (Nonprofit) Bulk Rates

* * * * *

5.0 Eligible and Ineligible Matter

* * * * *

5.4 Prohibitions

Special bulk third-class rates may not be used for the entry of material that advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of:

* * * * *

[Add new 5.4d as follows:]

d. Any other product or service unless one of the following exceptions is met:

(1) The sale of the product or the providing of such service is substantially related to the exercise or performance by the organization of one or more of the purposes used by the organization to qualify for mailing at the special bulk third-class rates. The criteria in 5.6 are used to determine whether an advertisement, promotion, or offer for a product or service is for a substantially related product or service and, therefore, mailable at the special bulk third-class rates.

(2) The product or service is advertised in third-class material meeting the prescribed content requirements for a periodical publication. The criteria in 5.8 are used to determine whether the third-class material meets the content requirements for a periodical publication.

[Change title of 5.5 as follows:]

5.5 Definitions, Insurance

* * * * *

[Add new 5.6; renumber existing 5.6 as 5.7; and renumber existing 5.7 as 5.9.]

5.6 Definitions, Substantially Related Advertising, Products

For the standards in 5.4d:

a. To be substantially related, the sale of the product or the providing of the service must contribute importantly to the accomplishment of one or more of the qualifying purposes of the organization. This means that the sale of the product or providing of the service must be directly related to accomplishing one or more of the purposes on which the organization's authorization to mail at the special bulk third-class rates is based. The sale of the product or providing of the service must have a causal relationship to the achievement of the exempt purposes (other than through the production of income) of the qualified organization. (The fact that income is produced from selling an advertised product or providing a service does not make such action a substantially related activity, even if the income will be used to accomplish the purpose or purposes of the qualified organization.)

b. Standards established by the Internal Revenue Service (IRS) and the courts with respect to 26 U.S.C. 513(a) and (c) of the Internal Revenue Code are used to determine whether the sale or providing of an advertised product or service, whether sold or offered by the organization or by another party, is substantially related to the qualifying purposes of an organization. (Advertisements in third-class material that meets the content requirements for a periodical publication need not meet the substantially related standard to be mailable at the special bulk third-class rates. See 5.4(d)(2) and 5.8.)

(1) If the advertising material is for a product or service that is not substantially related, it is not mailable at the special bulk third-class rates.

(2) If an organization pays unrelated business income tax on the profits from the sale of a product or the providing of a service, that activity is by IRS definition not substantially related. The fact that an organization does not pay such tax, however, does not establish that the activity is substantially related because other criteria may exempt the organization from payment. Thus, the inclusion of an advertisement for a product or service in a mailpiece may disqualify the piece for special bulk third-class rates, even if the mailer does not pay unrelated business income tax on its sale.

(3) Third-party paid advertisements may be included in material mailed at the special bulk third-class rates if the products or services advertised are substantially related to one or more of

the purposes for which the organization is authorized to mail at special bulk third-class rates. However, if the material contains one or more advertisements that are not substantially related, the material is not eligible for the special rates, unless it is a publication that meets the content requirements described in 5.8 and is not disqualified from using the special bulk third-class rates under another provision.

c. Announcements of activities, e.g., bake sale, car wash, charity auction, oratorical contest, are considered substantially related if substantially all the work is conducted by the members or supporters of a qualified organization without compensation.

d. Advertisements for products and services, including products and services offered as prizes or premiums, are considered substantially related if the products and services are received by a qualified organization as gifts or contributions.

e. An advertisement, promotion, offer, or subscription order form for a periodical publication meeting the eligibility criteria in E211 and published by one of the types of nonprofit organizations listed in 2.0 is mailable at the special bulk third-class rates.

* * * * *

[Renumber existing 5.8 as 5.12, renumber existing 5.9 as 5.11, and add new section 5.8 as follows:]

5.8 Periodical Publication Content Requirements

Advertisements for products and services in materials that meet the content requirements for a periodical publication are mailable at the special bulk third-class rates. The material mailed must meet the following requirements:

a. Have a title. The title must be printed on the front cover page in a style and size of type that make it clearly distinguishable from other information on the front cover page.

b. Be formed of printed sheets. (It may not be reproduced by stencil, mimeograph, or hectograph processes. Reproduction by any other process is permitted.) Any style of type may be used.

c. Contain an identification statement on one of the first five pages of the publication that includes the following elements:

(1) Title.

(2) Issue date. The date may be omitted if it is on the front cover or cover page.

(3) Statement of frequency showing how many issues are to be published each year and at what regular intervals (daily; weekly; monthly; monthly except June; four times a year in June, August, September, and December; annually; etc.).

(4) Name and address of the nonprofit organization, including street number, street name, and ZIP+4 or 5-digit ZIP Code. The street name and number are optional if there is no letter carrier service.

(5) Issue number. Every issue of each publication is numbered consecutively in a series that may not be broken by assigning numbers to issues omitted. The issue number may be printed on the front or cover page instead of in the identification statement.

(6) ISSN or USPS number, if applicable.

(7) Subscription price, if applicable.

d. Consist of at least 25% nonadvertising matter in each issue. Advertising is defined in E211.11.0.

* * * * *

[Renumber current 5.8 and 5.9 as 5.12 and 5.11, respectively; add new section 5.10 as follows:]

5.10 Products Mailable at Special Bulk Third-Class Rates

The following products are mailable at special bulk third-class rates:

a. Low-cost items within the meaning of 26 U.S.C. 513(h)(2), Internal Revenue Code. At the beginning of each calendar year, the value of low-cost items is adjusted for cost of living. The standard established on January 1, 1995, provided that low-cost items have a cost of not more than $6.56. The cost is the cost to the qualified nonprofit organization that mails the item or on whose behalf the item is mailed.

b. Items donated or contributed to the qualified organization. Such items do not have to meet the definition of low-cost as described in 5.10a.

c. A periodical publication (as defined in E211) of a nonprofit organization unless it is ineligible under the provisions of E370.5.0 to be mailed at the special bulk third-class rates.

* * * * *

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–5458 Filed 3–6–95; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 58

[AD–FRL–5157–7]

Proposed Requirements for Implementation Plans and Ambient Air Quality Surveillance for Sulfur Oxides (Sulfur Dioxide) National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Today's action proposes implementation strategies for reducing short-term high concentration sulfur dioxide (SO_2) emissions in the ambient air. The EPA is concerned that a segment of the asthmatic population may be at increased health risk when exposed to 5-minute peak concentrations of SO_2 in the ambient air while exercising. ''Exercising'' in this case can include walking up stairs or hills, as well as more strenuous activities.

In a related document published on November 15, 1994 in the Federal Register (part 50/53 document), EPA proposed not to revise the current 24-hour and annual primary national ambient air quality standards (NAAQS) for sulfur oxides (measured as SO_2) while soliciting comment on the possible need to adopt additional regulatory measures to address short-term peak SO_2 exposures. The three alternatives under consideration include: Augmenting the implementation of the existing standards by focusing on those sources or source types likely to produce high 5-minute peak SO_2 concentrations; establishing a new regulatory program under the authority of section 303 of the Clean Air Act (Act) to supplement protection provided by the existing SO_2 NAAQS; and revising the existing SO_2 NAAQS by adding a new 5-minute NAAQS of 0.60 ppm SO_2, 1 expected exceedance. All three regulatory alternatives would be implemented through a risk-based targeted strategy designed to protect the population at risk while minimizing the burden on the States for implementation.

This document presents EPA's proposed targeted implementation strategy and the associated regulatory requirements for implementing each of the regulatory measures under consideration. Also in this document, EPA solicits comments on appropriate changes to the new source review (NSR) programs as they relate to the 5-minute NAAQS regulatory alternative, and EPA

proposes to incorporate appropriate changes to the ambient air quality surveillance requirements.

DATES: Written comments on this proposal must be received by June 6, 1995. The EPA will hold a public hearing on this document in approximately 30 days and will announce the time and place in a subsequent Federal Register document.

ADDRESSES: Submit comments on the proposed revisions to the requirements for the preparation, adoption, and submittal of implementation plans (two copies are preferred) to: Office of Air and Radiation Docket and Information Center (Air Docket 6102), Room M 1500, U.S. Environmental Protection Agency, Attention: Docket No. A–94–55 (for part 51 comments) or A–94–56 (for part 58 comments), 401 M Street, S.W., Washington, DC 20460. The docket may be inspected between 8:00 a.m. and 5:30 p.m. on weekdays, and a reasonable fee may be charged for copying. The Air Docket may be called at 202–260–7548.

FOR FURTHER INFORMATION CONTACT: Laura D. McKelvey, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5497, for the part 51 SIP. For parts 51 and 52 new source review programs, contact Dan deRoeck, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5593. For part 58 ambient air quality surveillance, contact David Lutz, Emissions Monitoring and Analysis Division (MD–14), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5476.

Table of Contents

I. Background
II. Targeted Implementation Strategy
A. Background
1. Modeling
2. Ambient Monitoring
B. Implementing the Targeting Strategy
1. Ranking of Source Categories
2. Other Considerations
3. States' Targeted SO_2 Monitoring Program
4. Addressing the Problem
C. Relocating Monitors
1. Resource Concerns
2. Siting Concerns
3. Trends Data Concerns
4. Barriers
5. Conclusion
D. Compliance and Enforcement Issues
1. Averaging Times for Emission Limits
2. Malfunction Policy
3. Conclusion
III. Requirements Associated with Retention of Existing NAAQS
IV. Requirements Associated with Retention of Existing NAAQS and Implementation of a Section 303 Program
V. Requirements Associated with a New 5-Minute SO_2 NAAQS
A. Targeted Implementation Strategy
B. Designations—Section 107
1. Statutory Requirements
2. Timeframe for Submittal of Designations by State
3. Determining Initial Designation of an Area
4. Determining the Boundaries of Designated Areas
5. Promulgation of Designations by EPA
6. Failing to Submit Designations
C. State Implementation Plans (SIP's)
1. General SIP Requirements—Section 110(a)
2. General SIP Requirements—Section 110(a)(2)
a. Statutory and Existing Regulatory Requirements
b. Statewide SIP's for the Revised SO_2 NAAQS
c. New Source Review Issues
d. Schedule for Submittal of Section 110(a)(1) SIP's
D. Nonattainment Area Requirements
1. Attainment and SIP Submittal Dates
2. Classifications—Section 172(a)(1)
3. Nonattainment Plan Provisions—Section 172(c)
a. Statutory and Existing Regulatory Requirements
b. Reasonably Available Control Measures (Including Reasonably Available Control Technology)
c. Emission Inventory
d. Control Strategy Demonstration
e. Reasonable Further Progress
f. Permits for New and Modified Major Stationary Sources
g. Contingency Measures
E. SIP Processing Requirements
1. SIP Completeness
2. Approval/Disapproval of Plan
3. Sanctions and Other Consequences of SIP Deficiencies
VI. Significant Harm Levels and Episode Criteria
VII. Proposed Revisions to Part 58 Monitoring Regulations
A. Section 58.1 Definitions
B. Appendix C—Ambient Air Quality Monitoring Methodology
C. Appendix D—Network Design for State and Local Air Monitoring Stations (SLAMS) and National Air Monitoring Stations (NAMS)
D. Appendix F—Annual SLAMS Report
E. Appendix G—Air Quality Index Reporting and Daily Reporting
VIII. Transition Issues
IX. Other Clean Air Act Amendment Authorities Affecting SO_2 Sources
X. Public Participation
A. Comments and the Public Docket
B. Public Hearing
XI. Administrative Requirements
A. Regulatory Impact Analysis
B. Impact on Reporting Requirements
C. Impact on Small Entities
D. Reduction of Governmental Burden
E. Environmental Justice
Appendix A—References

SUPPLEMENTARY INFORMATION:

I. Background

As required under sections 108 and 109 of the Act, EPA has completed a thorough review of the air quality criteria and the current SO_2 NAAQS. Based on the health effects information assessed in the air quality criteria, EPA provisionally concludes that the current 24-hour and annual primary standards provide adequate protection against the effects associated with those averaging periods. As discussed in detail in the part 50/53 document (59 FR 58958), the key issue that emerged from the review is whether additional regulatory measures are needed to provide additional protection for asthmatic individuals that may be exposed to high 5-minute peak SO_2 concentrations.

As discussed in the part 50/53 document, the available air quality and exposure data indicate that the likelihood that the asthmatic population as a whole would be exposed to 5-minute peak SO_2 concentrations of concern, while outdoors and at exercise, is very low when viewed from a national perspective. The data indicate, however, that high peak SO_2 concentrations can occur around certain sources or source types with some frequency, suggesting asthmatic individuals that reside in the vicinity of such sources or source types will be at greater health risk than indicated for the asthmatic population as a whole. These assessments lead EPA to conclude that if any additional regulatory measures are adopted to provide additional protection, they should be implemented through a risk-based targeted strategy that focuses on those individual sources most likely to produce high 5-minute peak SO_2 concentrations.

Based on these consideration, EPA is soliciting comment on the part 50/53 document on three regulatory alternatives: (1) Augmenting implementation of the existing standards by focusing on those sources or source types likely to produce high 5-minute peak SO_2 concentrations; (2) establishing a new regulatory program under section 303 of the Act to supplement the protection provided by the existing NAAQS; and (3) revising the existing NAAQS by adding a new 5-minute standard of 0.60 ppm, 1 expected exceedance. Because the risk-based targeted strategy is an integral part of each of the three alternatives being proposed for comment, this notice will first present EPA's approach for targeting sources with a high potential

for causing or contributing to high 5-minute peak SO_2 concentrations. As discussed below and in the part 58 notice, a key element of this strategy will be to relocate existing SO_2 monitors to areas in proximity of point sources of concern. The relocation of monitors is necessary because the existing SO_2 monitoring network is designed to characterize urban ambient air quality associated with 3-hour, 24-hour, and annual SO_2 concentrations. These monitors are not located to measure peak SO_2 concentrations from point sources. As a result, EPA's existing guidance on siting criteria, the spanning of SO_2 instruments, and instrument response time likely leads to underestimates of high 5-minute peak SO_2 concentrations. To address these concerns, EPA is proposing revisions to the ambient air quality surveillance requirements (40 CFR part 58) and proposed certain technical changes to the requirements for Ambient Air Monitoring Reference and Equivalent Methods (40 CFR part 53) in the part 50/53 document.

In addition to outlining the targeted implementation strategy, this notice presents EPA's proposed program for implementing the section 303 program and the 5-minute SO_2 NAAQS alternative. Regardless of the alternative selected (i.e., retain the existing standards but augment their implementation, establish a new 303 program, or add a new 5-minute NAAQS), the targeted implementation strategy would be used to identify areas that may be subject to high 5-minute SO_2 concentrations. The measures that sources must take if they cause or contribute to such high peaks and the actions that the States must take will vary depending on the proposed alternative, if any, selected.

The following discussion gives statutory background information on the regulatory approach used in addressing air pollution. Under sections 108 and 109 of the Act, EPA is responsible for issuing air quality criteria and for proposing and promulgating NAAQS. Under section 110(a)(1) and part D of title I, the States then have primary responsibility for implementing the NAAQS. In broad outline, each State must develop and submit to EPA a plan that provides for attainment of each NAAQS within certain time limits. The EPA must review the SIP submittal and approve or disapprove its provisions. If States fail to submit required SIP's or submit inadequate SIP's, and the deficiencies are not cured within specified time periods, the States become subject to certain sanctions under section 179, and EPA ultimately becomes subject to an obligation to promulgate a Federal implementation plan (FIP). For a more complete discussion of the provisions of title I of the Act, see the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 published in the Federal Register on April 16, 1992 (57 FR 13498).

The 1990 Amendments preserved the existing framework of the SIP process, i.e., States are still responsible for preparing and submitting SIP's, and EPA is still responsible for reviewing and approving or disapproving SIP's. In addition, the 1990 Amendments, among other things, provide EPA with the unilateral authority to designate areas as either attainment, nonattainment or unclassifiable with respect to any NAAQS (see generally, section 107(d)(1)). States with areas designated nonattainment for a NAAQS are required to submit SIP's which provide for attainment of that NAAQS. States can face sanctions and other repercussions if they fail to meet the various SIP requirements of title I.

In general, for each of the proposed regulatory alternatives, the Act may or may not require specific actions on the part of EPA or the States. If the existing NAAQS is retained, then the Act imposes no new SIP requirements on EPA and the States, although EPA will use its discretionary authority to effectuate the Act's protective purposes by requiring States to implement targeted monitoring around sources capable of producing short-term high concentrations of SO_2 to the extent that those sources contribute to ambient concentrations of SO_2. If the existing NAAQS is retained along with a trigger level for implementing an emergency program under section 303, then the State would be principally responsible for developing and implementing the necessary prevention and/or abatement strategies. If a new 5-minute NAAQS is established, States would have to develop and submit SIP's which provide for implementation, maintenance and enforcement of the new NAAQS.

Further discussion of the requirements that are to be met by the States is provided below with regard to each of the additional regulatory alternatives to be considered by EPA.

II. Targeted Implementation Strategy

This section principally proposes EPA's strategy to identify those areas where the potential exists for exceedances of the current SO_2 NAAQS as well as the potential for high 5-minute concentrations of SO_2. This strategy has two stages. The first stage is to identify potential problem areas and then to conduct ambient monitoring at those areas. The second stage is to take corrective action should monitoring conducted during the first stage reveal concentrations in excess of the appropriate SO_2 NAAQS or trigger level. To begin this strategy, EPA intends to refocus Agency monitoring resources into those areas with potential 5-minute SO_2 peaks. The development and implementation of this strategy relies on the ability of the States to identify the specific emission and operating characteristics of sources which can contribute to violations of the existing NAAQS as well as contribute to high 5-minute SO_2 concentrations. Successful implementation of this strategy will result in either the identification of additional SO_2 problem areas or the conclusion that the ambient SO_2 problem is largely solved. It also allows EPA to apply finite resources in an efficient way where public health is most likely to be jeopardized by air pollution. The EPA intends to pursue this targeted strategy regardless of the outcome of the NAAQS proposal published in the part 50/53 notice and solicits comments on the targeted implementation strategy.

A. Background

1. Modeling

For implementing the current SO_2 program, EPA has historically relied on mathematical dispersion models for predicting air pollutant concentrations for the following needs: (1) For redesignating areas to nonattainment or attainment under section 107 of the Act; (2) for setting emission limits for an attainment strategy as required per 14 section 110(a)(2)(K) and part 40 of the Code of Federal Regulations, § 51.115 (40 CFR 51.115); (3) for predicting locations of maximum concentrations for siting monitors; (4) for determining boundaries of nonattainment areas; (5) for predicting consumption of ambient air increments under prevention of significant deterioration (PSD); and (6) for determining, under nonattainment NSR, if the significance level, used for determining if a major source or modification is considered to cause or contribute to a violation of the NAAQS, is exceeded.

The ''Guideline on Air Quality Models (Revised),'' EPA–450/2–78–027R, hereinafter referred to as ''the Modeling Guideline,'' has provided a common basis for conducting such modeling. The Modeling Guideline was incorporated into 40 CFR part 51 on July 20, 1993 (58 FR 38816) as appendix W. However, modeling is not currently feasible for predicting 5-minute ambient

air concentrations of SO_2. This is due to present uncertainties regarding the ability of models to reliably predict SO_2 concentrations for 5-minute periods and uncertainties with the accuracy of the input data needed to run the models. A brief summary of issues follows.

Validation. Although models are available, they have not been applied in predicting 5-minute SO_2 concentrations. Model validation studies have not been conducted to determine whether existing models can estimate with sufficient accuracy to be used in a regulatory context. Model validation studies are therefore necessary to determine the precision needed for input data for achieving the desired prediction accuracy. This would help determine, for example, whether on-site 5-minute meteorological data are needed or if nearby National Weather Service data are sufficient.

Emissions Data. In addition to the unassessed uncertainties of models, the accuracy and availability of input data, such as emissions, meteorology, and the occurrence of a short-term release (e.g., a process upset or control equipment malfunction) necessary to run the models, limits the ability to accurately predict 5-minute SO_2 concentrations at this time. Obtaining accurate source emission data for 5-minute periods is of critical importance. However, it is difficult to obtain such data since such data often depend on trying to measure emissions that may occur infrequently and at unpredictable times, concentrations, and flow rates (estimates of both flow rates and pollutant concentrations are necessary to determine mass emissions unless a mass balance can be performed, which would be difficult on a 5-minute basis). Moreover, emergency bypass valves, where measurements of emissions might be most appropriate under some circumstances, are infrequently used and therefore are not appropriate sites for the installation of monitors for continuous measurement of flow rates or pollutant concentrations.

Predicting Short-term Events. Current models used for predicting ambient air concentrations rely on a known emission release, usually some steady-state emission rate, and known past meteorological data. Short-term models use hourly weather data from the National Weather Service or from on-site meteorological stations, which are preprocessed before being used in the model. Long-term models use joint frequency distribution summaries of wind speed, direction and atmospheric stability category. In order to model for emission releases due to malfunctions, a method of determining the expected frequency of these malfunctions would have to be employed (e.g., a Monte Carlo simulation which is a computer simulation using random sampling techniques to obtain approximate solutions to mathematical or physical problems especially in terms of a range of values each of which has a calculated probability of being the solution). To date, EPA has never attempted to integrate dispersion modeling with malfunction frequency data to set emission limits, or to perform any other regulatory modeling tasks. Indeed, EPA's longstanding position has been to regard malfunctions as violations of applicable control requirements, subject to enforcement, unless it can be shown that such malfunctions are truly unavoidable (Bennett, 1982). To allow deviations from this policy, EPA would need to develop a method along with policy and guidance for its use, which EPA does not intend to do at this time.

Meteorological Data. On-site meteorological data are preferable, but National Weather Service data may be acceptable if a station is nearby and deemed representative of the area modeled. The meteorological data requirements for 5-minute SO_2 modeling could be determined through model evaluation studies, as discussed earlier in this section.

For these reasons, in contrast with longer averaging periods, models cannot currently be used to predict 5-minute SO_2 excursions needed to support a 5-minute NAAQS. However, despite these limitations, current models may still be used as a tool in a qualitative sense in the decision-making process for determining boundaries of nonattainment areas and for siting of monitors in areas of maximum concentrations. Consequently, the targeted implementation strategy which is designed to find areas exposed to high, 5-minute concentrations of SO_2 will rely principally on ambient air monitoring instead of modeling.

2. Ambient Monitoring

Requirements for monitoring are established at 40 CFR Part 58—Ambient Air Quality Surveillance. This part: (1) Contains criteria and requirements for ambient air quality monitoring and requirements for reporting ambient air quality data and information; (2) contains requirements pertaining to provisions for an air quality surveillance system in the SIP; (3) acts to establish a national ambient air quality monitoring network for the purpose of providing timely air quality data upon which to base national assessments and policy decisions; and (4) includes requirements for the daily reporting of an index of ambient air quality to ensure that the population of major urban areas are informed daily of local air quality conditions.

In the early 1970's when EPA and the States first began to monitor for SO_2 in the ambient air, SO_2 emissions were greater and more widespread than today. Combustion of sulfur-bearing fuels occurred not only in industrial and utility settings but in private settings as well. Fuel oil and coal were burned in residences and building boilers for warmth. For this reason and because of the potential for exposures of the population, large metropolitan areas were generally selected for monitoring. Sulfur oxide emissions have decreased about 27 percent since 1970 (EPA, 1992b). Today most residences and buildings use electricity or natural gas for heating and nearby industrial or utility sources have installed control devices or have switched to lower sulfur fuel resulting in less sulfur emissions in the vicinity of the ambient air monitors. Because of these reductions in SO_2 emissions in populated areas, only a small number of monitors are now recording exceedances. Even these few exceedances are due not to area sources of SO_2 but instead to emissions from nearby industrial sources. Despite these changes in the profile of sources of SO_2 emissions, the SO_2 ambient air monitoring network has not been modified to reflect the ambient air quality for SO_2 near industrial sources.

As a result of past emphasis on urban scale air quality management, SO_2 monitoring networks are designed to measure population exposure over a large area and are not generally designed to measure the influence of specific point sources. To an increasing extent, therefore, SO_2 nonattainment areas have been identified by air quality dispersion models and defined by one or a few point sources with probability of causing a violation of the SO_2 NAAQS when operating at allowable emission limits at times of unfavorable meteorology. Increased concerns about high short-term concentrations of SO_2 occurring near point sources, together with the prevalence of low concentrations at existing networks and the inability of models to predict short-term concentrations, suggest a need to redirect monitor networks near these sources.

As already briefly discussed, there are about 675 SO_2 SLAMS monitors across the Nation. In this notice, EPA is proposing changes to 40 CFR part 58 to allow for fewer SLAMS monitors per metropolitan statistical area. This will enable monitors and resources to be redirected towards placing monitors

near point sources. There is a higher initial cost associated with finding and setting up new monitoring sites than the annual operating cost of the monitor itself. Because of this and because of limited State monitoring resources, not all monitors initially freed up can be immediately placed around a targeted source, but will be phased in over a period of time.

For the reasons stated above, EPA proposes to direct States to redeploy SO_2 monitors around targeted sources of SO_2 and respan the instrumentation at selected sites to measure values above 0.5 parts per million (ppm). The monitors will be sited at microscale, middle, or neighborhood distance from the targeted sources in order to best measure high, 5-minute concentrations of SO_2. Micro, middle, neighborhood, and urban scales are all more completely defined in 40 CFR part 58, appendix D. The EPA and States will first monitor around those sources in areas with population with the greatest potential to exposure to 5-minute, peak SO_2 levels. The EPA and States will consider discontinuing the operation of existing monitors and relocate them for the purpose of monitoring around targeted sources (see part 58 discussion published elsewhere in this notice for monitoring requirements).

B. Implementing the Targeting Strategy

As discussed earlier, the available air quality and exposure information indicates that a large degree of protection against exposure to short-term peak SO_2 concentrations is provided by the current NAAQS. Full implementation of the Acid Rain Program will result in further reduction of SO_2 emissions and the likelihood of peak SO_2 concentrations. The available data indicate, however, that peak concentrations of SO_2 can still occur around certain sources or source types with some frequency, suggesting asthmatic individuals who reside in the vicinity of such sources or source types will be at greater health risk than indicated for the asthmatic population as a whole. These assessments have led EPA to conclude that any regulatory measures adopted to provide additional protection should be implemented through a risk-based targeted strategy that focuses on those individual sources more likely to produce high 5-minute peaks.

Therefore, in order to gather more information, to focus implementation efforts on those sources that EPA's existing data suggest may pose the greatest health risk, and to allocate monitoring resources as efficiently as possible, EPA has developed an approach to guide States in developing a prioritized list of sources to be targeted for monitoring. As further discussed below, potential sources have been placed in one of three groups based on the overall likelihood of the source category to emit high 5-minute SO_2 peaks. However, before redeploying monitors, States must evaluate each of these facilities individually, basing their decision on more specific information such as size, configuration, compliance history and proximity to population centers.

As just described, States need to review their current SO_2 monitoring networks to determine which monitor sites should continue operating and which should be discontinued and relocated around potential sources. The EPA will work with each State to develop a targeted SO_2 monitoring plan to implement the strategy, based on the number of targeted sources, SO_2 monitoring resources, and within a reasonable time horizon.

The EPA believes that new locations for siting monitors should be in the vicinity of sources suspected of causing short-term SO_2 peaks. Some examples of sources which emit SO_2 are petroleum refineries, sulfuric acid plants, fossil fuel-fired industrial boilers, utility boilers, pulp and paper mills, iron and steel mills, wet corn milling operations, nonferrous smelters, carbon black manufacturing, portland cement manufacturing, phosphatic fertilizer production, and natural gas production. This list is not exhaustive and could potentially include other process sources with known emissions of SO_2. These sources have the ability to emit relatively large quantities of SO_2 over short durations. Such large quantities of emissions may be due to releases from batch type operations, operational malfunctions or upsets requiring control equipment bypasses, control equipment malfunctions that can result in uncontrolled emissions to the atmosphere, startup/shutdown, short stacks subject to downwash, or fugitive emissions.

1. Ranking of Source Categories

The information most heavily relied on in developing this ranking of source categories was: (1) Available 5-minute air quality data documenting the number of high, short-term concentrations observed in the vicinity of various sources by monitoring networks (Table 3–1, EPA, 1994b); (2) estimates of exposures from various source types, which integrated a source's likelihood to emit short-term SO_2 peaks with the size and activity of the surrounding population, as summarized in Table 3–5, Table B–1, and Table B–2 (EPA, 1994b), as well as accompanying documentation (Rosenbaum et al., 1992; Stoeckenius et al., 1990; Burton et al., 1987); and (3) the Geographic Targeting Data Base for nonutility sources that is derived from combining a census of manufacturing, the EPA Facilities Index System, and the EPA Aerometric Information Retrieval System (AIRS) into a projected source impact data set. This data base, which will be available through AIRS, is a data set of nonutility sources sorted on the projected annual process emissions per source and per size category.

In order to further refine the ranking of source categories, both within and between groups, EPA solicits technical information concerning several issues which include: (1) The likelihood of source categories to produce short-term SO_2 peaks; (2) the characteristics, within a source category which cause a subset of facilities to be more likely to produce short-term SO_2 peaks; and (3) the factors which are likely to drive the variability in SO_2 emissions of individual facilities within a source category.

The ranking described here separates source categories into three groups: A, B, and C. In pursuit of this targeting strategy, EPA intends to require States to evaluate groups A, B, and C sources and produce a refined monitoring plan. States are free to substitute, e.g., group B sources for group A sources in their priority schemes, but should provide a reasoned justification for finding that the risks posed by these sources justifies such substitution. Ultimately, EPA anticipates that sources in all three groups will be assessed for their exposure potential and appropriate actions taken to address them. The EPA believes that there is a higher probability of finding individual sources that produce high, short-term ambient concentrations of SO_2 within each source category in group A than in the other groups. As such, they are judged in general to pose the highest risk of exposing population in their vicinity to high, short-term concentrations of SO_2, as well as potentially exposing some individuals to several peaks per year.

The source categories within group A were generally found to meet two of the three following characteristics. Either the source category contained SO_2 sources which: (1) Have a high emission rate, (2) are near monitors which measured 5-minute peaks, or (3) are estimated, based on exposure analysis, to expose a high number of asthmatics living in their vicinity at elevated ventilation rates to SO_2 concentrations greater than 0.6 ppm. In addition, these source categories are known to have

short-term releases due to events discussed later.

Group A consists of the following source categories: Sulfite pulp and paper mills, primary copper smelters, primary lead smelters, aluminum smelters, and the top 20 percent of the petroleum refineries in terms of projected annual emissions of SO_2 as listed in the Geographic Targeting Data Base.

Source categories were selected for group B because they have high annual emissions or are subject to events leading to short-term releases of SO_2. In addition, in some instances, there were air quality or exposure data which indicate the source category to be of concern for emitting short-term SO_2 peaks.

The EPA judged group B source categories to have the potential to produce high 5-minute peaks of SO_2 but to pose less risk than group A because: (1) Air quality or exposure data indicated that the potential to emit high 5-minute peaks of SO_2 was less than for group A; (2) the grouping was based on annual emission data, but lacked 5-minute data to estimate risk; or (3) the overall risk posed by the source category was judged to be low. This was the case for industrial boilers because, while exposure analysis indicated that this group was responsible for a considerable number of exposures, the exposures were attributed to a very small subset of industrial boilers. The EPA expects that States will examine their source categories within this group very closely for inclusion in the targeted SO_2 monitoring plan.

The group B sources are as follows: Kraft sulfate pulp and paper mills, secondary copper smelters, secondary lead smelters, the remaining petroleum refineries, iron and steel mills, carbon black manufacturing, portland cement manufacturing, crude petroleum and natural gas extraction processes, phosphatic fertilizer manufacturing, industrial boilers, and sulfuric acid plants.

Industrial boilers were placed in this group because they accounted for about 30 to 50 percent of the 5-minute SO_2 exposure events given in the staff paper supplement (Table 3–5, EPA, 1994b). However, in a study by Stoeckenius et al. (Table 2–14, 1990), approximately half of the total industrial boiler exposures were attributed to a very small proportion (≤2 percent) of the total population of industrial boilers analyzed. Good engineering judgment suggests that the use of higher sulfur coal and short stack height would contribute to an increased likelihood of producing ambient SO_2 peaks.

The group C source category consists of utility boilers. Although utility boilers can emit large quantities of SO_2, many power plants are not anticipated to cause 5-minute violations despite their high emission rates due to tall stacks and steady-state operating conditions. They are placed in group C because as a source category, utility boilers may be responsible for approximately 17 to 37 percent of total estimated exposures (Table 3–5, EPA, 1994b). However, the risk of exposures is very unevenly distributed across the sources in this category. Approximately 75 percent of the utility sector's post-title IV exposures were estimated to result from less than 10 percent of the power plants (Rosenbaum, 1992, Table 3, Burton et al., 1987).

With the passage of the 1990 Amendments, Congress created under title IV an SO_2 emission trading program as an integral part of the Acid Rain Program, which is designed to reduce SO_2 emissions by 10 million tons nationwide by the year 2010. Phase I, which begins in 1995, reduces emissions from the 110 largest emitting power plants, which are identified in table A of section 404 of the Act. The Acid Rain Program introduces a flexibility for sources to choose the most cost-effective compliance strategy to achieve their emission reduction obligations and to maintain the national cap of 8.95 million tons of SO_2 emissions. Compliance flexibility may involve switching to low-sulfur coal, scrubbing, conservation, other emission control technologies, or buying SO_2 allowances.

Title IV sources participating in the Acid Rain Program are under the obligation to match their annual SO_2 emissions with their allowance holdings. They are also required to meet all other requirements of the Act and regulations that apply to them, including the NAAQS. Therefore, the compliance flexibility offered under the Acid Rain Program does not permit any source to violate regulations adopted to attain or maintain the SO_2 NAAQS. Emissions from these sources will be closely tracked, because title IV sources are also required to install continuous emissions monitoring systems (CEMS) and report to EPA on a quarterly basis their emissions of SO_2, nitrogen oxides, and carbon dioxide.

Further improvements in air quality are expected to be realized from the SO_2 emission reductions under Phase II of the Acid Rain Program to be implemented by January 1, 2000 under title IV of the Act. Because of the potential to have higher emissions and because of potential plume downwash and interaction of complex terrain, EPA is mainly concerned with those power plants that buy allowances rather than reduce emissions themselves in order to comply with title IV and those located in complex terrain, respectively. Complex terrain is defined for modeling applications as that terrain exceeding the height of the stack, but this definition is being applied here for monitoring applications as well. In a study done for EPA, that is contained in the docket for this rulemaking (Polkowsky, 1991), many of the predicted exceedances of the SO_2 standards in the vicinity of power plants should be reduced or eliminated by allocating allowances based on a reduced rate under Phase II. Any remaining exceedances not addressed by the more restrictive Phase II emission rates will require a reanalysis of the SO_2 NAAQS control strategy demonstration and consideration of more restrictive emission limits to protect the air quality standards.

Because of the SO_2 reductions that will occur under the Acid Rain Program, the accurate stack monitoring of their emissions, and the long-range atmospheric transport of these emissions due to taller stacks at most large utilities, EPA believes that higher priority in placing ambient monitors should be given to nonutility sources. However, in instances at a particular power plant where the possibility of high 5-minute emission peaks still exists, EPA believes that consideration should be given by the State to locating monitors near the facility.

2. Other Considerations

In addition to the guidelines and groupings listed above, which are based largely on available information concerning the likelihood of a source type to produce concentrated peaks of SO_2, States may have other information which may lead them to believe that a source located in a lower probability group should be made a higher priority for SO_2 monitoring. Of particular importance to consider is any available information on potential population exposure, inferred in part by the population in the vicinity of the source.

In addition, other information can be incorporated by States into an evaluation of the relative likelihood of sources under their jurisdiction to produce SO_2 exposures, thus refining their judgments on priority of monitoring decisions. Such other information can include the type of process being used (i.e., one type of process within a source category may be less efficient and known to emit more SO_2 than a newer one), a history of past

upsets or malfunctions, the type of fuel used, the type of terrain around the source (e.g., is the source in a river valley or on flat terrain), knowledge of how well the source is controlled, and a history of citizen complaints, and should be considered by the States when deciding which sources to monitor first. Such considerations would be noted in each State's targeted SO_2 monitoring plan presented during the annual SLAMS review as described below.

As part of the targeting strategy, the States will also need to decide how much relative weight should be given any particular source. For example, a State would have to determine how heavily to weigh a group A source in a less densely populated area versus a group C source burning a high sulfur fuel in a more densely populated area. In addition, some sources are often found collocated with other sources such as sulfuric acid plants with copper smelters. Industrial boilers may be located with any number of process sources. There may be small geographic areas where there is clustering of an assorted number of SO_2 sources. In these situations there is no precise way to determine what source should be targeted first at this point. For this reason, the decision making should rest with the States who have better knowledge of the individual circumstances pertaining to the potential sources to be targeted.

3. States' Targeted SO_2 Monitoring Program

The EPA will review and take appropriate action on the States' targeted SO_2 monitoring plans during the annual SLAMS network review process to ensure that States provide an adequate rationale for any deviations from the grouped approach. The States are then expected to present to EPA in a targeted SO_2 monitoring plan at the annual SLAMS network review their listing of sources to be monitored, the schedule for conducting such monitoring, and the rationale for selecting these sources. Requirements for the targeted SO_2 monitoring plan are discussed later in this notice for part 58 but EPA expects the targeted SO_2 monitoring plan to be a dynamic process that could change depending on data gathered from early rounds of monitoring or changes at targeted sources, such as installation of control equipment.

Section 110(a)(2)(B) of the Act requires SIP's which provide for the establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile and analyze data on ambient air quality. Should EPA determine that a State's targeted SO_2 monitoring plan is inadequate, then EPA expects to issue a call for a SIP revision under section 110(k)(5) of the Act based on a finding that the SIP is substantially inadequate in meeting the requirement of section 110(a)(2)(B). The EPA solicits comments on all aspects of this approach to grouping of sources to investigate potential air quality problems.

In the State targeted SO_2 monitoring plan, EPA expects SO_2 monitoring network reviews to be completed within 1 year of the effective date of promulgation of any of the three regulatory alternatives. Implementation of network revisions is expected to take longer.

4. Addressing the Problem

Regardless of the regulatory alternative chosen by the Administrator, those areas which have monitored exceedances of the existing or revised NAAQS or of a section 303 trigger level should undergo a compliance inspection by the State of the targeted source. If the source is out of compliance, EPA expects that the responsible air pollution control agency will initiate appropriate enforcement action to bring it into compliance, e.g., by using available administrative or judicial enforcement authorities. If the source is in compliance, the State will need to pursue other appropriate solutions to the problem as discussed later in section III.

The EPA encourages States to pursue, where appropriate, the enforcement and improved compliance options before other regulatory actions. In many cases, air quality problems may be due to poor operation and maintenance or other resolvable compliance problems. In these instances, enforcement action can result in timely resolution of violations and avoid the sometimes lengthy regulation development process. However, the State should pursue existing regulatory options where the regulations are inadequate, e.g., because the source is in compliance with the existing regulations and an air quality problem still exists.

C. Relocating Monitors

The EPA's criteria for the network design of monitors are discussed in 40 CFR part 58, appendix D. Elsewhere in this notice, EPA is proposing changes to part 58 in order to implement the proposed targeting program. The EPA recognizes that it is not a trivial matter to relocate monitors and that there are concerns that agencies will need to consider in making relocation decisions.

1. Resource Concerns

The EPA believes that the resources currently devoted to monitoring ambient concentrations of SO_2 may be more effectively utilized through systematic evaluations and reconfigurations of existing monitoring networks. However, even if States and locals acquire no additional SO_2 monitors and rely solely on the current number of monitors, there will be some costs incurred when relocating monitors. Costs associated with moving a monitor include the resources taken in locating new sites and negotiating leases along with the capital costs of a new shelter and associated equipment. Because of the costs for relocating monitors, not all monitors freed up can be immediately placed around a targeted source, but will be phased in over a period of time. The operating costs saved by not operating these monitors will be used toward the costs of relocating monitors.

In more detail, the costs for moving an SO_2 monitor have been calculated in 1994 dollars to be $60,940 per site. These costs include initial capital costs, operation, and amortization. The initial costs include network design and site selection, land lease, power drop, shelter, site preparation, calibration equipment, data logger, quality assurance plan preparation, etc. The operation costs include routine site visits, repairs, maintenance, data acquisition and reporting, quality assurance calibrations, and supervision. The amortization costs for replacement capital equipment were also calculated.

The total costs for the initial 3 years are summarized as follows. The existing network of 679 NAMS, SLAMS, and industrial monitors costs about $16 million per year. The first year costs for reconfiguration and operation of NAMS, SLAMS, and industrial monitors in order to comply with changes to 40 CFR part 58, which is being proposed in this notice and is not a result of the targeted implementation strategy, is estimated to be $12.4 million per year. This will leave an available $3.6 million to be used toward the targeted implementation strategy the first year to establish and operate four monitors around 15 sources.

The second year costs for operating the NAMS, SLAMS, industrial, and targeted implementation strategy monitors is estimated to be $9.6 million dollars, making available $6.4 million for the targeted implementation strategy. This will allow for establishing sites around 26 sources in addition to the 15 sources from the first year for a total of 41 targeted sources.

The third year costs for operating monitors are estimated to be $11.4 million, leaving $4.6 million for the targeted implementation strategy. This will allow for establishing sites around 16 sources in addition to the 41 sources established in the first and second years for a total of 57 targeted sources. The EPA estimates that monitors at 7 of the 15 sources established in the first year would be moved in the third year due to no monitored violations.

2. Siting Concerns

The EPA is aware of the many considerations that arise when siting monitoring stations. Monitors are usually sited where electrical power is already available, they are reasonably secure, the immediate environment satisfies the siting criteria of part 58, and they are in proximity to the desired locations. Waiver provisions are also included in the regulations to deviate from siting criteria when appropriate. Generally, monitors are sited at or within reasonable proximity of the desired locations. For purposes of convenience, monitors are sometimes sited where other pollutants are already monitored.

When conducting the SO_2 network review, EPA-approved air quality models and saturation studies may be used to predict locations where maximum concentrations are expected within the vicinity of SO_2 sources or clusters of sources. As discussed earlier, models can be used in a qualitative sense to predict relative ambient impacts and are useful as a tool for establishing preferred monitor locations for predicting 5-minute concentrations.

3. Trends Data Concerns

A potential concern regarding the movement of monitors is the effect on EPA's ability to detect and evaluate trends in air quality. When monitors are operated in the same locations for several years, it is possible to account for the effects of meteorology, seasonal patterns in air pollutant concentrations and other variables specific to a monitor location. When monitors are moved, the confidence in detecting trends in air pollutant concentrations is compromised due to a new set of variables that may affect ambient concentrations at the new location.

The EPA needs to maintain a certain number of monitors for detecting and evaluating trends in air pollutant concentrations. However, EPA believes that a sufficient number of monitors now used for trends analyses are not critical to the objectives of trends reporting and should be considered for relocation. Elsewhere in this notice, the EPA is proposing changes to 40 CFR part 58, appendix D, in which a minimum number of SO_2 monitors in the metropolitan areas will be retained for trends purposes.

4. Barriers

Certain institutional barriers may be encountered in some attempts to relocate monitors. These stem from the separate political entities responsible for implementation of air pollution control programs at the State and local levels throughout the U.S. Where monitor sites considered for relocation are within the boundaries of one political entity, the problems are diminished, since the resources necessary to maintain existing monitoring sites may be redirected to the new sites, providing the SO_2 monitor is not sharing a site with other pollutant monitors. Sites in a network around targeted sources of SO_2 emissions which are located in different States or air pollution control districts may present some added difficulties. In such cases, resources, such as grants for support of air pollution planning and control programs as allowed under section 105 of the Act, may be redirected by EPA to aid in relocating and maintaining new monitoring stations.

5. Conclusion

In general, EPA believes that a portion of the monitors now directed to monitoring ambient air quality in population areas for trends purposes should be considered for relocation. While EPA may not normally require monitors operated by industries to be relocated and thus industry-operated monitors will not be candidates for relocation, EPA strongly encourages companies to evaluate their networks in light of today's notice. However, quality-assured data from such monitors could allow for the relocation of nearby SLAMS monitors to other locations if monitored air quality concentrations from industry-operated monitors provide assurances that the SO_2 NAAQS are maintained.

D. Compliance and Enforcement Issues

Certain compliance and enforcement issues will arise only if either the section 303 alternative or the new 5-minute NAAQS alternative is selected. The issues are how to determine compliance to ensure protection of a trigger level or NAAQS that has a 5-minute averaging period, and what actions are appropriate by the State when the cause of the violation may be process upsets, startup or shutdown, batch operations, or other nonsteady-state sources. As is currently done with the NAAQS, measurement of SO_2 ambient air concentrations with ambient air monitors under each of the three proposed regulatory alternatives will serve as indicators of compliance. Enforcement will be based on the results of compliance inspections at the source, and the compliance inspection will be based on requirements in the applicable operating permit or SIP. In most instances, EPA believes that in order to ensure protection of the 5-minute NAAQS or trigger level, compliance will need to be determined through sources meeting recordkeeping and reporting requirements or carrying out any other agreed-upon actions designed to reduce short-term emission peaks.

1. Averaging Times for Emission Limits

Under EPA's policy for emissions averaging under the current SO_2 NAAQS, sources are to be controlled through the imposition of emission limits having averaging times consistent with the averaging period of the air quality standard of concern. As an example, in order to protect the SO_2 ambient air quality standard that has been established for a 24-hour period, mass emission limits for sources should normally allow averaging of emissions over no more than a 24-hour period when determining compliance with the limits. The purpose of this is to restrict extreme variations in emissions of short duration that might otherwise be allowed to occur if emission variations are averaged over much longer periods (e.g., 30 days). Air quality concentrations in excess of the standard could be produced while sources are still complying with long-term average emission limits by reducing emissions sufficiently at other times within their emission averaging periods.

A variety of emission limit averaging times had been developed by State and local agencies for SIP's both prior and subsequent to the implementation of this policy on averaging. As a result, those SIP's with averaging times inconsistent with the policy that were adopted prior to implementation of the policy are included in an effort by EPA to correct general SIP enforcement deficiencies. The EPA has not taken final action on those rules developed subsequent to the policy.

The EPA has allowed the use of stack tests and analysis of fuel samples for sulfur content as surrogates for continuous compliance monitoring with the emission limits. In many cases, these methods will continue to be feasible for ensuring compliance with a 5-minute trigger level or NAAQS. Technically, SO_2 emissions can be measured in a stack at intervals less

than 5 minutes using Method 6c (the instrumental analyzer procedure) in Appendix A of 40 CFR part 60 or by using a CEM. However, EPA believes that in many instances 5-minute releases of SO_2 that would cause exceedances of a 5-minute NAAQS or trigger level will occur at unpredictable times or as fugitive emissions (i.e., not through a stack), making stack tests an impractical compliance method. Nor may sampling fuel at 5-minute intervals be a practicable alternative as in the case of coal in which sulfur content may not be homogeneous. In addition, the source of the emission may not be due to combustion of fossil fuel but to chemical process emissions.

The EPA believes that in most instances, in order to attain a 5-minute NAAQS or trigger level, the State will not be able to rely on measurable emission limits but instead on actions by the source to, for example, modify equipment or process or to have improved maintenance that will address the emission releases that are causing 5-minute exceedances. Because of these potential limitations to determining compliance of emission limits designed to protect a 5-minute NAAQS or trigger level, compliance will in most instances need to consist of the State ensuring that the source has implemented the necessary remedies. Verification that actions have been effective will require that ambient air monitoring continue for a reasonable period, e.g., another 2 years following the corrective action. However, in those instances where emissions can be feasibly measured on a 5-minute basis or it is determined that fuel sampling is a feasible compliance indicator, the State may elect to set an emission limit and use emission measurement or fuel sampling as the method for determining compliance.

2. Malfunction Policy

As stated previously, EPA has on occasions used its enforcement discretion in determining how and whether to act on unavoidable violations of source emission limits during periods of startup, shutdown and malfunction (40 CFR 60.11(d)). This policy recognizes that during startup and shutdown conditions, effective pollutant control may sometimes not be technically feasible due to process temperatures and pressures that have not yet stabilized. The policy also recognizes that certain source malfunctions are not reasonably foreseeable and are unavoidable, which result in uncontrolled emissions to the atmosphere. Clearly, in many cases, forces of nature such as floods, tornadoes and lightning strikes can overwhelm a source's ability to function in a normal fashion and may produce conditions that preclude proper operation of sources or control equipment. However, some conditions may be reasonably anticipated and proper design of equipment can ameliorate their effects (e.g., grounding of equipment for lightning protection, observation of flood plains, etc). It is possible in some cases to address this through design of redundant control systems to guard against the release of uncontrolled emissions to the atmosphere should one system suffer a malfunction; however, the cost may be prohibitive and such systems are not uniformly required. Some SO_2 control systems offer this protection, such as dual acid plants operated in parallel at petroleum refineries. Should one plant experience operational problems in such cases, the other is available to provide a continued partial level of sulfur (and ultimately SO_2) removal.

3. Conclusion

As is currently done, where there have been monitored violations of the 24-hour, 3-hour, or 5-minute SO_2 NAAQS or trigger level, the State shall be required to determine the source of the SO_2 emissions and investigate the cause of the emissions at that source. Where the results of these investigations demonstrate that improper operation and maintenance practices and/or poor control equipment design are primarily responsible for release of uncontrolled emissions to the atmosphere, the State shall be expected to work with the source to take appropriate actions to reduce inadequately controlled source emissions.

For purposes of verifying the results of any corrective actions taken and compliance, the EPA intends to rely on continued ambient air monitoring. The EPA also anticipates the need to review the implementation of its malfunctions policy in light of the concerns discussed in this document with the possible result of more stringent showings required to justify the conclusion that malfunctions are truly unavoidable. Recordkeeping based on earlier baseline assessments of the problem at the source should be maintained at the source to assist in evaluations should further exceedances be monitored.

III. Requirements Associated With Retention of Existing NAAQS

The State is not required to revise its SIP to address 5-minute, high concentrations of SO_2 if the existing NAAQS is retained. However, in concert with changes in monitoring requirements for part 58 proposed in this document, as discussed above, EPA is proposing to require States to implement a targeting strategy to more aggressively monitor process sources that are likely producing high concentrations of SO_2 even if for short periods of time. As described previously, the targeted strategy will be implemented through the annual SLAMS network review during which the States will report on progress made the previous year. The EPA believes that the results of such a targeting strategy will reduce the possibility and frequency of 5-minute high-concentration SO_2 exposures as an incident to more effectively monitoring peak SO_2 concentrations and by bringing into compliance those sources violating the existing NAAQS. However, EPA acknowledges that there may be occurrences of SO_2 releases which could exceed the 5-minute NAAQS or section 303 trigger level proposed in the part 50/53 document and not exceed the current SO_2 NAAQS. In those cases, the State should, nevertheless, conduct compliance inspections in the eventuality that the source is out of compliance with current SIP requirements. Beyond these measures, EPA would not have authority to take further actions under the title I SIP program.

If violations of the current NAAQS cannot be resolved through compliance and enforcement (i.e., the source is in compliance), then the State will be expected to take steps to reduce emissions on its own initiative by revising the emission limit, by requiring process modifications, or other control measures. The State shall then prepare a SIP revision for EPA approval in order to make the emission reductions federally enforceable. In the event that a State does not take these steps, then EPA can take either of two actions: (1) If the area is currently designated attainment, using the authority under section 107(d) to redesignate the area nonattainment; and/or (2) issuing a SIP call under section 110(k)(5) of the Act to notify the Governor of the State that the SIP is inadequate to attain and maintain the SO_2 NAAQS and to call for a SIP revision as necessary to correct such inadequacies.

There are advantages and disadvantages in using either the nonattainment redesignation or SIP call approach. For instance, the nonattainment redesignation process, in addition to requiring expeditious attainment of the standard, imposes the requirements applicable under part D, title I, of the Act (e.g., reasonably available control measures (RACM), reasonable further progress (RFP),

nonattainment NSR, and contingency measures), and requires sanctions and FIP's if the SIP is not developed and implemented in a timely manner.

While these part D requirements may well be useful in effectively addressing the air quality problem, plan development may proceed more quickly in response to a SIP call in some cases because the SIP call does not entail the process and time needed to undertake a redesignation of an area (including the notification of the Governor required under section 107(d)(3)). The SIP submitted in response to a SIP call under section 110 must also provide for expeditious attainment of the NAAQS. A disadvantage of relying on SIP calls for attainment areas is that, unless an area is otherwise subject to section 173 permit requirements, no mandatory sanctions are applicable in the event the State fails to respond adequately to the SIP call. The discretionary air grant funding sanction under section 179 remains available for attainment areas, however. The requirement for EPA to promulgate a Federal plan if the State fails to submit an approvable SIP is wholly applicable for either option.

In addition to the advantages and disadvantages just described, decisions about which regulatory approach to use should consider factors specific to the affected area. Among the factors EPA will consider are the following:

(1) The magnitude of the violation.

(2) The persistence of violations.

(3) The exposure potential. (For example, is it near a population center or a school?)

(4) The State's regulatory process. (For example, is it lengthy; does the legislature only meet periodically? Would the timeline of one option fit better within the State's regulatory frame work?)

(5) Other sources in the area. (For example, can culpability be clearly determined? Would one process facilitate that determination of culpability over the other? Is new source growth anticipated?)

(6) The need for a more objective level of control.

(7) The type of information available for indicating a problem exists (monitoring, modeling, others).

(8) If there is uncertainty associated with modeling and/or past history of failing to attain the standard, does the action taken provide for appropriate contingencies that can be implemented if the area fails to provide a SIP or to attain and maintain the standards?

(9) Is there a need for long-range planning for the area and does the approach taken facilitate this planning effort?

IV. Requirements Associated With Retention of Existing NAAQS and Implementation of a Section 303 Program

In attempting to address health concerns with population exposure to high concentrations of SO_2 for short periods of time, one of the alternatives that EPA considered in the part 50/53 notice is to reaffirm the existing SO_2 NAAQS and at the same time to promulgate a trigger level for implementation of a program under section 303 of the Act. The basic rationale and legal authority for that program are discussed in that document. What follows in more detail is the proposed implementation program, including the proposed regulatory text. The EPA believes that a targeted implementation strategy, as already discussed, could be used to find sources that would be subject to further emissions or operational control under a section 303 program. The EPA believes that a program to protect the public from exposure to high concentrations of SO_2 for short periods of time may be successfully implemented under section 303. The type of program EPA is proposing to implement would require States to submit contingency plans to EPA that would require certain actions on behalf of the State and source once an established ambient SO_2 concentration (''trigger level'') is violated. The State would be required to take certain actions to determine the source of the emissions and to protect against future violations of the trigger level.

As described in the part 50/53 notice concerning the regulatory alternative of the section 303 program, EPA believes that sections 303, 110(a)(2)(G), and 301 provide adequate legal authority to establish this program and to promulgate regulations to implement it. As with the existing section 303 program, EPA's proposed regulations require States to adopt contingency plans under section 110(a)(2)(G) to carry out the program. The EPA is proposing to require that each State submit such plans to EPA within 18 months of the promulgation of final regulations establishing a section 303 program. The EPA believes that section 110(a)(2)(G) authorizes EPA to require these submissions and that 18 months is an adequate period of time to develop and submit the programs to EPA for approval.

Once the section 303 trigger level has been violated, EPA proposes that the following actions occur. First, within 30 days of a violation of the trigger level, the State would carry out a compliance inspection of the culpable source. The EPA recommends that the State not wait for a violation but conduct a compliance inspection after the first exceedance. If the source is out of compliance with its existing emission limits, then the State would take the necessary steps to bring the source into compliance within 30 days of the compliance inspection. If, however, the State determines that bringing the source into compliance with its existing emission limits would not be likely to prevent further exceedances of the trigger level, or the State determines the source to be in compliance with applicable emission limits, then further action would be needed. In such circumstances, the next step would be for the State and source to examine the cause of the emissions. Once that is determined, enforceable actions would need to be developed to address the cause of the pollution. These actions must eventually be made federally enforceable by adopting them as source-specific SIP revisions. The EPA proposes to require that actions be taken within 60 days of the compliance inspection and provide for implementation of any new control measures as expeditiously as practicable. The EPA expects that the control measures that may need to be implemented to prevent recurrences of 5-minute SO_2 peaks may include better maintenance of control equipment, better capture of fugitive emissions, raising the stack height, or other innovative control measures.

The EPA believes that the actions required of States and sources would provide adequate protection against the recurrence of high, 5-minute SO_2 peaks once such emissions are identified as a problem for particular sources. The EPA also believes that the time periods for taking action that it is proposing are reasonable periods, as they provide sufficient time for the required actions to take place, while assuring that any necessary corrective actions will be taken and implemented as expeditiously as practicable.

The EPA would also retain the ability to take whatever actions it believed appropriate directly under section 303. Thus, EPA could take direct action under section 303 prior to the adoption of State contingency plans if needed, or take action after their adoption if circumstances warranted such Federal action. Moreover, once the section 303 contingency plans have been adopted and incorporated into SIP's, EPA may directly enforce their provisions pursuant to section 113 of the Act.

However, it is EPA's position that the States are primarily responsible for carrying out actions under this section

303 program. If a State does not exercise its responsibility under section 303 once a trigger level has been violated, EPA intends to consult with the State prior to taking action itself.

The EPA is proposing to add an Appendix X to 40 CFR part 51 which explains the computations necessary to determine from monitoring data whether the 5-minute trigger level has been exceeded or violated. Appendix X defines several terms, among them, ''5-minute hourly maximum,'' ''exceedance,'' ''expected exceedance,'' and ''violation.'' Appendix X explains the convention used to calculate expected exceedances, which essentially is a procedure which makes an adjustment for missing monitoring data.

In brief, the 5-minute trigger level is not violated when the number of expected exceedances per year is less than or equal to one. In general, this determination is made by recording the number of 5-minute hourly maximum exceedances at a monitoring site for each year, making the adjustment for missing data (if required), averaging the number of exceedances over a 2-year period, and comparing the number calculated to the allowable number of exceedances (one). The 2-year period reduces the likelihood of a source being penalized for a violation that may be attributed to a one-time event. Aside from changes in terminology to make the language appropriate for a section 303 program rather than a NAAQS, the proposed Appendix X is identical to the Appendix I to 40 CFR part 50 for interpreting the 5-minute NAAQS for SO_2 that was proposed in the part 50/53 document. The EPA is soliciting comments on Appendix X.

V. Requirements Associated With New 5-Minute SO_2 NAAQS

The EPA proposed in the part 50/53 document a new primary 5-minute SO_2 NAAQS which would be in addition to the 24-hour and annual primary SO_2 NAAQS. Should this new 5-minute NAAQS be promulgated, EPA intends to initiate the targeted implementation strategy previously described to determine which areas are not meeting the new 5-minute NAAQS. In addition, EPA and the States will need to initially meet statutory requirements under sections 107 and 110. In general, these requirements are that the States must submit their initial suggested designations and statewide SIP's to EPA. Later, if areas are designated or redesignated to nonattainment, then EPA and the States must meet the requirements under section 172. The requirements under sections 107, 110, and 172 of the Act are discussed in detail below. The rationale for any requirements which are discretionary, such as setting timeframes, or which need interpretation, are also discussed. Since the current annual, 24-hour, and 3-hour NAAQS are retained under this option, all existing requirements, such as SIP submittal and attainment dates, will remain in place as to the current NAAQS.

A. Targeted Implementation Strategy

Should a new 5-minute NAAQS be promulgated, EPA intends to initiate the targeted implementation strategy previously described to determine which areas are not meeting the revised 5-minute NAAQS. And as described, the States should initially attempt to address any violations through compliance inspection and, if necessary, enforcement actions.

Because of the modeling issues discussed previously (II.A.1.), the targeted implementation strategy relies principally on monitoring. The use of models is not advocated at this time for establishing section 107 designations under a 5-minute SO_2 NAAQS due to a lack of evaluation results concerning model performance, or defining the precision and bias of modeled 5-minute ambient SO_2 concentrations. However, models may still be used under a new 5-minute SO_2 NAAQS program for the following purposes:

(1) Models may be useful as a tool for developing control strategies. When evaluating emissions from complex sources, they may provide information on the relative contributions to ambient SO_2 concentrations from various sources of emissions. Receptor modeling may be a useful tool for developing control strategies for complex sources. The use of tracers or ''tramp elements'' in association with these models would be needed for SO_2 emission sources to determine source locations and relative contributions to ambient SO_2 concentrations.

(2) Models can be and are recommended as a useful tool for evaluating the design of monitoring networks for a 5-minute SO_2 standard. They can provide useful information in a relative sense for determining points of maximum impact providing the characteristics of the emission source are not too complex or uncertain.

B. Designations—Section 107

1. Statutory Requirements

The 1990 Amendments require EPA to promulgate designations, of areas for new or revised NAAQS. Section 107(d)(1)(A) of the Act requires States to submit designations, and section 107(d)(1)(B) requires EPA to promulgate designations of all areas (or portions thereof) with respect to new or revised NAAQS as nonattainment, attainment or unclassifiable. The specific requirements of section 107(d)(1) (A) and (B) of the Act are described below. An area which is designated nonattainment is one that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the NAAQS for the pollutant. An area which is designated attainment is one which meets the NAAQS for the pollutant. An area which is designated unclassifiable is one that cannot be classified on the basis of available information as meeting or not meeting the NAAQS for the pollutant. Also, while section 107(d)(1) provides for States to submit a list of areas designated, it authorizes EPA to modify the designations submitted by the States. Once an area's initial designation is promulgated, any change in the designation status is accomplished pursuant to section 107(d)(3) of the Act.

2. Timeframe for Submittal of Designations by State

As mentioned above, section 107(d)(1)(A) of the Act requires States to submit a list of all areas (or portions thereof) in the State designating them as nonattainment, attainment or unclassifiable for SO_2. States must submit such list of areas (or portions thereof) in a timeframe EPA deems reasonable but not later than 1 year after the effective promulgation date of the new or revised NAAQS. The EPA cannot require the States to submit the list of areas in less than 120 days, however.

The EPA intends to require that the initial SO_2 designations be submitted not later than 1 year from the effective date of promulgation of the revised standard in order to allow the States as much time as possible to gather the necessary data to make the designation determinations. The EPA believes that, in most instances, areas will need to be initially designated unclassifiable due to lack of adequate ambient air monitoring data and the inability to rely on models for predicting 5-minute SO_2 concentrations. By giving the maximum time allowed under the Act, States may have enough time to gather the data needed to make an adequate determination of an area's designation status. Nonetheless, EPA encourages States to submit designations sooner, wherever possible, in order to provide improved protection of public health.

3. Determining Initial Designation of an Area

The EPA expects, in most instances, to initially designate areas as unclassifiable due to the lack of complete data or no data at all reported for 5-minute averaging time increments. Most of the existing ambient monitoring data are not reported for 5-minute averaging time increments, and EPA believes that those that are reported in this manner may not meet the data completeness criteria required by the proposed SO_2 NAAQS (see discussion in revisions to CFR part 50, appendix I, published in the part 50/53 document). Revising the SO_2 NAAQS to include an additional primary standard set at 5-minute and 0.60 ppm necessitates that most ambient monitors be respanned to measure the higher concentration.

In anticipation of a revised NAAQS, EPA has requested that the States respan monitors to begin measuring for higher concentrations. In these cases, EPA and States may have data to provide as a basis for initially designating an area as nonattainment.

The EPA understands that in some instances States may want to request that certain areas be initially designated attainment for the revised SO_2 NAAQS. An area will not be initially designated as attainment based solely on ambient monitoring data since no requirements have been issued to ensure complete data. Data completeness is a significant issue when trying to determine if an area is attaining the NAAQS as opposed to determining if an area is not attaining the NAAQS. However, areas with no SO_2 sources as shown by their emission inventory would be likely candidates for an early attainment designation. Providing ambient air monitoring data does not indicate otherwise, EPA intends to designate an area as attainment if the State can show in its emissions inventory that the area does not contain any potential major source of SO_2 as defined in the Act. This does not preclude the State or EPA from initially designating an area unclassifiable, if there is reason to believe there is an SO_2 source which may be causing a violation of the revised NAAQS in the area. The EPA believes this guidance gives reasonable assurance that the area is in attainment of the revised NAAQS. This does not prevent EPA or the State from redesignating an area, initially designated unclassifiable, to nonattainment at a later time should ambient air monitoring data indicate that the area is violating the NAAQS.

4. Determining the Boundaries of Designated Areas

States should identify the boundaries of the nonattainment, attainment and unclassifiable areas when submitting designations for the revised SO_2 NAAQS. In the absence of data or more specific boundary information, it may be more appropriate to define SO_2 nonattainment boundaries by the perimeter of the county in which the ambient SO_2 monitor(s) recording the violation is located. Alternatively, it might be appropriate to define the nonattainment area using monitoring or other data to determine more specifically the geographic area that is nonattainment. In addition, if the ambient monitor measuring violations is located near a county boundary, then EPA recommends that the adjacent county also be designated as nonattainment for SO_2. In some situations, however, a boundary other than the county perimeter may be appropriate. States may choose, alternatively, to define the SO_2 nonattainment boundaries by using any one, or a combination, of the following techniques: (1) Qualitative analysis, (2) spatial interpolation of air monitoring data, (3) air quality simulation by dispersion modeling, or (4) saturation monitoring. If a State defines an SO_2 nonattainment boundary using one of the methods above, EPA requires that it submit a defensible rationale for the boundary chosen with the Governor's request to designate the area.

Boundaries for attainment areas can be drawn along current political boundaries if the State can show in its emissions inventory that the area does not contain any potential major source of SO_2 as defined in the Act, nor any of the sources listed in the previous section on determining the initial designation of an area.

All areas of the State not designated attainment or nonattainment will be designated unclassifiable. The boundaries of the unclassifiable area will be the ''remainder of the State.''

5. Promulgation of Designations by EPA

Section 107(d)(1)(B)(i) of the Act requires that EPA promulgate the designations submitted by States as expeditiously as practicable, but not later than 2 years from the date of promulgation of the revised SO_2 NAAQS. This period may be extended for up to 1 year where EPA has insufficient information to promulgate the designations. The EPA may make any modifications deemed necessary to the areas (or portions thereof) submitted by the State (see generally section 107(d)(1)(B) of the Act). However, no later than 120 days before promulgating a modified area, EPA must notify the affected State and provide an opportunity for the State to demonstrate why any proposed modification is inappropriate.

The EPA expects in many cases to require the full extension of 1 year before promulgating the designations of many areas as allowed under section 107(d)(1)(B) of the Act. The full extension would be needed in these cases in order to allow States and EPA to respan or relocate monitors and collect complete ambient data to better ascertain the designation status of areas with monitors. Therefore, EPA generally intends to promulgate the initial area designations within 3 years from the effective date of promulgation of the revised SO_2 NAAQS.

Designations promulgated pursuant to section 107(d)(1) of the Act are exempt from the Administrative Procedures Act requirements for notice-and-comment rulemaking (5 U.S.C. section 553–557) (see section 107(d)(2)(B) of the Act). Therefore, when EPA promulgates designations with respect to the revised SO_2 NAAQS, it may or may not promulgate the designations through notice-and-comment rulemaking.

6. Failing to Submit Designations

If the Governor of a State fails to submit the required SO_2 designations, in whole or in part, EPA is required to promulgate the designation that EPA deems appropriate for any area (or portion thereof) not designated by the State (see section 107(d)(1)(B)(ii) of the Act). The EPA will do so no later than 3 years after the date of promulgation of a new NAAQS.

C. State Implementation Plans (SIP's)

Section 110(a) establishes the general requirements for SIP's. In addition, subparts 1 and 5 of part D of title I of the Act establish additional requirements concerning SIP's for areas designated nonattainment for SO_2. These requirements concern the content of the SIP's, the applicable dates by which nonattainment areas must attain a new SO_2 NAAQS, and the schedule for the submission of the SIP's.

1. General SIP Requirements—Section 110(a)

All SIP's, regardless of whether they concern areas designated nonattainment or not, must meet the general SIP requirements of section 110(a). Section 110(a)(1) provides that each state must submit a SIP to provide for the implementation, maintenance and enforcement of a primary NAAQS in

each air quality control region within the State (hereinafter referred to as ''statewide SIP's''). Section 110(a)(2) sets forth the elements that a SIP must contain in order to be fully approved. These elements are discussed in the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13556–13557).

2. General SIP Requirements—Section 110(a)(2).

(a) *Statutory and Existing Regulatory Requirements.* Regulations for the preparation, adoption, and submission of SIP's under section 110 of the Act were initially published November 25, 1971 (36 FR 22369) and codified as 40 CFR part 51. The 40 CFR part 51 has been modified from time to time since then. On November 7, 1986 (51 FR 40656), EPA restructured and consolidated the 40 CFR part 51 regulations to make them easier to follow and revise in the future.

The 1990 amended Act did not substantially change the SIP requirements in section 110(a)(2) of the Act. For the most part, EPA believes that the existing regulatory framework, i.e., 40 CFR part 51, defines the general section 110(a)(2) SIP requirements for SO_2. However, as a result of a revised SO_2 *NAAQS,* data handling practices, and specified SIP submittal timeframes in the Act, some revisions to 40 CFR part 51 are necessary. The specific revisions to 40 CFR part 51 are discussed in another section entitled ''Regulatory Revisions.'' The EPA also notes that under section 193, anything in part 51 that is inconsistent with the 1990 Amendments is superseded even if EPA has not yet revised the regulations. A discussion of the statewide SIP requirements is provided below.

(b) *Statewide SIP's for the Revised SO_2 NAAQS.* For the most part, States have already adopted, as part of their overall SIP for current SO_2 NAAQS, rules or regulations which satisfy the majority of the general SIP requirements in section 110(a)(2) of the Act and the existing 40 CFR part 51. At this time, the EPA does not envision that States will have to develop substantial new general regulations for the statewide SIP's for the revised SO_2 NAAQS. The EPA will issue appropriate guidance in the future in the event that this assessment changes.

There are two requirements, in particular, under section 110(a)(2) that must be met by the States upon promulgation of a revised SO_2 NAAQS. Section 110(a)(2)(B) requires the establishment and operation of appropriate ambient air monitoring systems, data from which must be made available to the Administrator upon request. Coupled with this is a requirement under section 110(a)(2)(E) that States have adequate resources and authority to implement the SIP.

(c) *New Source Review Issues.* Section 110(a)(2)(C) of the Act requires States to protect the NAAQS by providing for the regulation of the construction and modification of stationary sources. In areas that are designated as attaining the NAAQS, as well as areas that are designated as unclassifiable under section 107 of the Act, each implementation plan must contain legally-enforceable requirements which enable the State to determine whether the construction or modification of stationary sources will interfere with maintenance of the NAAQS (see section 161 of the Act). For major stationary sources that locate in attainment or unclassifiable areas, the Act requires that comprehensive preconstruction review requirements under PSD of the air quality program contained in part C, title I, of the Act must be satisfied [1] (e.g., sections 160–169 of the Act).

The EPA has set forth SIP requirements at 40 CFR 51.166 containing the minimum requirements by which a State preconstruction review permit program will be considered to meet with the statutory requirements for PSD.[2] In very broad terms, these requirements provide for the imposition of best available control technology at new and modified major stationary sources for each pollutant subject to regulation under the Act, and provide for review of the potential air quality impacts of such sources and modifications (e.g., section 165(a) of the Act).

The current PSD program requirements under 40 CFR 51.166, which protect the existing primary and secondary NAAQS for SO_2, will also be protective of a new 5-minute SO_2 NAAQS in that the regulations prevent the issuance of a PSD permit to a major source that would cause or contribute to a violation of any NAAQS (§ 51.166(k)). However, while no changes to the existing requirements are needed to ensure the new or modified PSD source must evaluate their ambient impacts against a new 5-minute standard for SO_2, EPA has reviewed certain existing PSD provisions at § 51.166 (and corresponding provisions at § 52.21) to determine whether changes may be needed to ensure that a new 5-minute SO_2 standard, as proposed in the part 50/53 document, would be adequately protected.

Several of the existing PSD provisions rely on Agency-prescribed significance levels to determine whether any pollutant that would be emitted by a new or modified major stationary source must undergo comprehensive permit review. First, EPA uses significant emissions rates (expressed in tons per year) to determine whether a regulated pollutant (other than a pollutant emitted in major amounts) to be emitted by a new or modified major stationary source must undergo PSD review [3] (e.g., § 51.166(b)(23)(i)).

Second, significant ambient impact concentrations are used to determine whether a source must undergo an impact analysis to show that it will not contribute to a violation of the NAAQS or PSD increments (§ 51.165(b)). Finally, significant monitoring concentrations are used to determine whether the reviewing authority may exempt a source from the ambient monitoring requirements for a particular pollutant (e.g., § 51.166(i)(8)).

As described below, the EPA examined each applicable significance level used for SO_2 in order to determine whether a 5-minute standard for SO_2 would necessitate any revisions to the existing levels. In each case, EPA has determined that sufficient information is not presently available to warrant any revision to the existing levels.

The significant emissions rate for SO_2 is currently defined as an emissions rate of 40 tpy or more under the PSD regulations. New or modified sources that would emit significant amounts of SO_2 must undergo PSD review for that pollutant. Conversely, de minimis amounts of SO_2 emissions are exempt from further review. The existing significance level for SO_2 is based on the premise that an emissions rate that would result in ambient concentrations equaling at least 4 percent of the 24-hour primary standard should be considered significant (45 FR 52676, 52707–52708 (August 7, 1980)). In order to help determine whether the existing

[1] The statutory PSD requirements apply to new major stationary sources and modifications of existing major stationary sources. A ''major stationary source'' is: (1) Any source from a statutory list of 28 source categories that emits, or has the potential to emit, 100 tons per year (tpy) or more of a regulated pollutant; or (2) any other source that emits, or has the potential to emit, at least 250 tpy of a regulated pollutant (see section 169(1) of the Act).

[2] The EPA has also promulgated regulations for a Federal PSD program at 40 CFR 52.21. The Federal program applies to States that do not have EPA-approved PSD programs as part of their SIP.

[3] The PSD review requirements apply to any regulated pollutant which a new or modified major stationary source would emit in significant amounts. Thus, a source may be ''major'' for only one pollutant, but PSD review would apply to other pollutants emitted in ''significant'' amounts.

significant emissions rate for SO_2 would be appropriate, based on the same criteria, for the proposed 5-minute standard, EPA would need to predict the 5-minute concentration that results from a source emitting 40 tpy of SO_2. The absence of an approved methodology for either directly modeling 5-minute SO_2 concentrations or converting modeled concentrations of SO_2 from a given averaging period (e.g., 3-hour, 1-hour) to a 5-minute average precludes EPA from completing its analysis of the adequacy of the existing significant emissions rate. Should EPA adopt a 5-minute NAAQS for SO_2, EPA will further study the need for revisions of the significant emissions rate.

Because of the present difficulties associated with efforts to model 5-minute ambient concentrations of SO_2, EPA has also determined that it would be inappropriate to establish a significant ambient impact level for a 5-minute SO_2 NAAQS. In the event that adequate data and the appropriate performance evaluations become available to support the use of dispersion models to estimate 5-minute SO_2 concentrations in the future, EPA will consider the establishment of a 5-minute SO_2 significant ambient impact concentration.

Under the existing regulations, the reviewing authority may exempt a proposed major stationary source from the PSD pre-application monitoring requirements (40 CFR 51.166(m)) if either the air quality impacts resulting from the source, or the existing ambient concentrations of the particular pollutant in the area of the source, are less than the prescribed significance level for that pollutant. For SO_2, the significance level is 13 $\mu g/m^3$ (24-hour average). Since models are not available for a source to project its ambient impact for 5-minute averaging periods, EPA believes that consideration of a new significance level for SO_2 based on a 5-minute averaging time is not practical at this time. Instead, EPA proposes to continue using the existing 24-hour significance level in conjunction with the pre-application monitoring requirement at 40 CFR 51.166(m). Thus, if a source finds that it must gather ambient data for SO_2, based on ambient impacts and existing air quality concentrations exceeding the SO_2 significance level, then the applicant will be required to gather 5-minute air quality data in addition to data for all other applicable averaging periods for SO_2.

As indicated in the preceding discussion, for several different PSD program elements, EPA proposes to retain existing SO_2 significance levels instead of pursuing the possibility of revising the significance levels based on a new 5-minute SO_2 NAAQS. The EPA requests the public's views about this proposed use of existing significance levels.

The PSD program also includes specific air quality limitations, known as increments, which define maximum allowable increases in pollutant concentrations. These increments prevent unlimited increases in ambient pollutant concentrations beyond a determined baseline concentration for a particular area.[4] Section 166 of the Act authorizes EPA to promulgate new increments within 2 years from the date of promulgation of new NAAQS. The existing PSD regulations include increments for SO_2 for the 3-hour, 24-hour and annual averaging periods. The EPA will determine the need for a 5-minute increment for SO_2, especially in light of the present difficulties which restrict the Agency's ability to use air quality dispersion models to determine the amount of increment that would be consumed by new and modified SO_2 sources for a 5-minute averaging period. The EPA will also investigate the feasibility of developing and implementing alternatives to numerical air quality increments (expressed in $\mu g/m^3$), as authorized under section 166(d) of the Act. In any event, EPA will not propose new increments for SO_2 until such time that a new 5-minute SO_2 NAAQS is first promulgated.

(d) *Schedule for Submittal of Section 110(a)(1) SIP's.* Section 110(a)(1) states that the SIP's required by that subsection are to be submitted to EPA ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 109.'' Such SIP's are to provide for ''implementation, maintenance and enforcement'' of the new NAAQS. Section 110(a)(1), however, must be read in light of the timetable for designations of areas as nonattainment, attainment, or unclassifiable under section 107(d)(1) described above, and the explicit timetables for SIP submissions for nonattainment areas under part D of title I. Section 107(d)(1) provides that designations must occur within 3 years of the promulgation of a new NAAQS and the part D provisions (sections 172(b) and 191(a)) provide for the submission of SIP's meeting the requirements of section 172(c) within a specified time period following the designation of an area as nonattainment.

The EPA believes that these provisions can best be harmonized in the context of a new 5-minute SO_2 NAAQS by interpreting the section 110(a)(1) deadline as being satisfied by the submission of SIP elements whose content does not depend on the designation of an area. In the case of SIP's concerning a new 5-minute SO_2 NAAQS, EPA believes that such submissions would be limited to SIP revisions concerning compliance with the monitoring requirements of section 110(a)(2)(B) and the resource requirements of section 110(a)(2)(E). The EPA believes that, until a problem with maintaining a new 5-minute NAAQS is identified, it is reasonable to view the already-existing substantive SIP provisions as adequate and that it would be absurd to require areas to adopt additional control requirements or emission limitations prior to the identification of particular problem sources. The EPA notes that any areas designated nonattainment will be subject to further SIP submission deadlines requiring the submission of nonattainment area SIP's under part D of title I that satisfy the substantive requirements of section 172(c).

Moreover, with respect to the monitoring and resource SIP elements, EPA believes that any changes to existing SIP's that would be needed will not be significant in terms of scope or effort. Indeed, some States may have to make minimal or no changes to their own rules in order to implement the new monitoring requirements. For this reason, and because the changes in monitoring requirements will assist in developing information about ambient air quality that will be relevant to designations, EPA is proposing that all States submit any needed SIP revisions within 1 year of final action on today's proposal.

D. Nonattainment Area Requirements

Areas designated nonattainment must meet the SIP requirements of part D of title I as well as the requirements of section 110. The provisions of part D

[4] The PSD areas (areas designated as attainment or unclassifiable under section 107 of the Act) are further categorized as Class I, II, or III areas (section 162 of the Act). Each of these classifications determines the ''maximum allowable increases'' or increment of air quality deterioration permissible (section 163 of the Act). Only a relatively small increment of air quality deterioration is permissible in Class I areas and consequently these areas are afforded the greatest amount of air quality protection. An increasingly greater amount of air quality deterioration is allowed in Class II and III areas.

Air quality deterioration is measured from the date on which the first PSD application is submitted. This date becomes the baseline date after which any change in actual emissions affects the allowable increment. In all instances, however, the NAAQS represent the overarching air quality ceiling that may not be exceeded, notwithstanding any allowable increment.

pertinent to SO_2 areas are those contained in subparts 1 and 5. These provisions have been described previously in the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498), and the following discussion will focus on the requirements of particular relevance to the implementation of a new NAAQS.

1. Attainment and SIP Submittal Dates

To determine the attainment dates and SIP submittal dates applicable to a new SO_2 NAAQS, it is necessary to analyze the relationship of the relevant provisions of both subpart 1 and subpart 5.

The starting point for the analysis is section 172(a) in subpart 1. Section 172(a)(2)(A) provides that the attainment date for attaining a primary NAAQS is the date by which attainment can be achieved as expeditiously as practicable, but not later than 5 years from the date of designation under section 107(d). It also provides that EPA may extend the attainment date to the extent appropriate, for a period of up to 10 years after designation, considering the severity of the air quality problem and the feasibility and availability of pollution control measures. Section 172(a)(2)(D), however, provides that ''[t]his paragraph (paragraph (2)) shall not apply with respect to nonattainment areas for which attainment dates are specifically provided under other provisions of this part.'' This language therefore leads to the question of whether areas designated nonattainment with respect to a new SO_2 NAAQS are areas for which attainment dates are provided elsewhere in part D of title I.

As subpart 5 establishes attainment dates for certain SO_2 nonattainment areas, the issue is whether those provisions establish attainment dates for areas designated nonattainment with respect to a new SO_2 NAAQS. Of particular relevance are sections 192(a) and 191(a). Section 192(a) provides that SIP's required under section 191(a) provide for attainment ''as expeditiously as practicable but no later than 5 years from the date of the nonattainment designation.'' Section 191(a) requires that ''[a]ny State containing an area designated or redesignated under section 107(d) as nonattainment with respect to the national primary ambient air quality standards for sulfur oxides, nitrogen dioxide, or lead subsequent to the date of the enactment of the Clean Air Act Amendments of 1990 shall submit to the Administrator, within 18 months of the designation, an applicable implementation plan meeting the requirements of this part.''

One possible interpretation of the Act is that the language of section 191(a) applies to areas designated nonattainment with respect to a new SO_2 NAAQS promulgated after the enactment of the 1990 Amendments. If that interpretation is followed, section 192(a), rather than section 172(a)(2), would determine the attainment date for those areas. This is due to the language in section 172(a)(2)(D) providing that section 172(a)(2) does not apply to areas for which attainment dates are specifically provided elsewhere in part D. The language of section 191(a), rather than section 172(b), would also apply to the establishment of the SIP submittal date for nonattainment SIP's required to implement the new NAAQS. The consequence of this interpretation for the attainment deadline is that the 5-year attainment deadline of section 192(a) would apply, rather than the 5-year deadline that can be extended to 10 years under certain conditions under section 172(a). As far as SIP submittal deadlines are concerned, section 191(a)'s 18-month deadline would apply rather than section 172(b)'s 3-year deadline.

An alternative interpretation is that the provisions of subpart 5 were intended to apply only to attainment dates and SIP submittal deadlines concerning a NAAQS in existence at the time of the enactment of the 1990 Clean Air Act Amendments. Under this view, the general provisions of subpart 1 (i.e., sections 172(a)(2)(A) and 172(b)) would apply to the determination of attainment dates and SIP submittal deadlines pertaining to a new SO_2 NAAQS promulgated after the 1990 Amendments. The EPA notes, however, that it believes that an 18-month SIP submittal deadline would provide adequate time for the States to develop and submit their SIP's regarding a new NAAQS. It would also provide more time to implement the control strategy adopted in the SIP, which EPA believes is preferable. If the maximum period of 3 years were allowed, there would only be 2 years between the date of the submittal of the SIP and the 5-year attainment date, and even less time between EPA's final action regarding the approvability of the SIP's and the attainment date. Consequently, even if the provisions of section 172(b) were to apply to SIP submittal deadlines for a new NAAQS, EPA would require States to submit their SIP's within an 18-month timeframe pursuant to section 172(b)'s authority to establish a shorter period than the maximum 3-year period.

The EPA requests comment on both of these interpretations and the consequences that they lead to regarding the establishment of attainment dates and SIP submittal deadlines for a new SO_2 NAAQS.

2. Classifications—Section 172(a)(1)

The classification provisions (section 172(a)(1)) give EPA the authority to classify nonattainment areas for the purposes of applying attainment dates (section 172(a)(2)(A)). In exercising this authority, EPA may consider such factors as the severity of the nonattainment problem or the availability and feasibility of the pollution control measures. Based upon the classification, EPA may set later attainment dates for areas with more severe air quality problems (section 172(a)(2)(A)).

At the present time, EPA does not intend to establish a classification scheme for areas which violate the new 5-minute SO_2 NAAQS. Currently the SO_2 program does not have a classification scheme since, typically, within the SO_2 program the severity of the SO_2 ambient air quality is not a factor in attaining the NAAQS once the needed control measures are put in place. The EPA believes that in most of the areas designated nonattainment for the new 5-minute NAAQS, the cause of the high SO_2 concentrations (usually a single source) will be obvious. While the method of controlling these emissions may not be as obvious, the control measure should result, in most cases, in a single step correction of any future violations. Consequently, EPA does not believe a classification scheme is necessary or appropriate.

3. Nonattainment Plan Provision—Section 172(c)

Section 172(c) lists the requirements to be met by a nonattainment SIP. Some of those requirements are discussed below in the context of a SIP submittal for a SO_2 NAAQS nonattainment area.

a. *Statutory and Existing Regulatory Requirements.* As previously indicated, regulations for the preparation, adoption, and submission of SIP's were initially published November 25, 1971 and codified as 40 CFR part 51. The 40 CFR part 51 has been modified from time to time since then. However, the most current guidance on how EPA intends to interpret the 1990 Amendments is found in the General Preamble (57 FR 13498, April 16, 1992).

The 1990 Amendments added section 172(c) which prescribes the nonattainment SIP requirements. To the extent that the existing SIP regulations that have been codified in 40 CFR parts 51 and 52 do not conflict with section 172(c), EPA will rely on them to carry out the requirements of section 172(c).

As necessary EPA will adopt new or modify existing regulations to carry out other provisions of section 172(c). For further information on potential changes to 40 CFR part 51 with respect to SO_2, see the separate section entitled ''Regulation Revisions.'' Also, as noted earlier under section 193, anything in part 51 that is inconsistent with the 1990 Amendments is superseded even if EPA has not yet revised the regulations.

b. *Reasonably Available Control Measures (Including Reasonably Available Control Technology).* Section 172(c)(1) requires SIP's to ''provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable (including such reductions in emissions from existing sources as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) and shall provide for attainment of the national primary ambient air quality standards.'' Historically, EPA has defined RACT as ''the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (Strelow, 1976).'' In the case of a new 5-minute SO_2 NAAQS, EPA believes that RACT should be interpreted in accordance with EPA's long-standing interpretation.

The EPA notes that, as the sources of any violations of a new SO_2 NAAQS should be readily identifiable, there should not be any questions about the identity of the sources to which RACT should be applied. Thus, in the case of a new SO_2 NAAQS, compliance with EPA's general recommendation that available control technology be applied to those existing sources in the nonattainment area that are reasonable to control in light of the attainment needs of the area and the feasibility of such controls should be readily achieved (EPA 1992c, n. 20, 57 FR 13541).

While a plan must require the implementation of RACM needed to attain within the statutory timeframes, it need not require the adoption of all available control measures if it demonstrates attainment as expeditiously as practicable without the adoption of all measures. The EPA believes it would be unreasonable to require that a plan which demonstrates attainment include all technologically and economically available control measures if such measures would not expedite attainment. Thus, it is possible that some available control measures may not be ''reasonably'' available, and not required by RACM, because their implementation would not expedite attainment (EPA 1992c, 57 FR 13543).

In addition to available control technology that should be fully considered in identifying RACT for purposes of the current SO_2 NAAQS, RACT for purposes of a new 5-minute NAAQS would also include consideration of maintenance and process operating procedures at SO_2 sources that will achieve the new NAAQS within the statutory timeframes. The EPA believes that such available control measures should be fully assessed, in light of the general guidance above, in determining RACM (including RACT) for purposes of implementing a 5-minute SO_2 NAAQS.

c. *Emission Inventory.* Section 172(c)(3) states that the SIP shall include a comprehensive, accurate, current inventory of actual emissions from all sources of SO_2 in the nonattainment area and that EPA may require periodic revisions of the inventory as determined necessary to assure that the requirements of part D are met. Typically for most nonattainment areas, determining the nature and extent of specific control strategies needed requires an emissions inventory. Also, typically, an emission inventory should be based on measured emissions or documented emission factors. The more comprehensive and accurate the inventory, the more effective the control evaluation.

However, in terms of a new 5-minute NAAQS, measured emissions or emission factors for the probable sources of 5-minute NAAQS exceedances, process upsets, equipment malfunctions, batch processes, startup/shutdown, and fugitive emissions, are almost nonexistent. It is anticipated that most nonattainment areas for the 5-minute SO_2 NAAQS will be defined by a single source as measured by a monitor or monitors close to the source. Thus, in most cases, the part D SIP for a nonattainment area will fulfill the inventory requirements of section 172(c)(3) by identifying the source around which the monitors were located and which may have caused the monitored problem. In situations where it is technically feasible, emission estimates should be made using emission measurements or factors.

d. *Control Strategy Demonstration.* The EPA has historically required dispersion modeling for setting emission limits. However, because of the limitations of models in predicting 5-minute concentrations, other methods may have to be used. Control strategy demonstrations may have to rely on monitors as evidence of adequacy of the implemented emission reductions as being protective of the 5-minute NAAQS. In certain cases, the monitors may be used for setting the emission limits. The EPA intends to rely on section 11.2.2 of the Modeling Guideline which addresses requirements for using monitoring networks to set emission limits.

e. *Reasonable Further Progress.* As stated in the General Preamble (57 FR 13547), section 171(l) of the amended Act defines reasonable further progress as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part (part D) or may reasonably be required by EPA for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.'' This definition is most appropriate for pollutants which are emitted by numerous and diverse sources, where the relationship between any individual source and the overall air quality is not explicitly quantified, and where the emission reductions necessary to attain the NAAQS are inventorywide. The definition is generally less pertinent to pollutants such as SO_2, particularly for the proposed new NAAQS, which usually have a limited number of sources, relationships between individual sources and air quality which are relatively well defined, and emissions control measures which result in swift and dramatic improvement in air quality. That is, for SO_2, there is usually a single ''step'' between pre-control nonattainment and post-control attainment.

Therefore, for a new 5-minute SO_2 NAAQS, with its discernible relationship between emissions and air quality and significant and immediate air quality improvements, RFP will continue to be construed as ''adherence to an ambitious compliance schedule.''[5] The compliance schedule for a new 5-minute NAAQS could consist of implementation of a maintenance program where the source of emissions is due to frequent malfunction of a control device. The SIP's which require RFP as just described for an SO_2 nonattainment area will be considered as meeting the requirements of section 172(c)(2).

f. *Permits for New and Modified Major Stationary Sources.* Section 172(c)(5) of the Act states that the SIP shall require permits for the construction and operation of new or modified major stationary sources (i.e., stationary

[5] U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, ''Guidance Document for Correction of Part D SIP's for Nonattainment Areas,'' (Research Triangle Park, North Carolina, January 27, 1984), page 27.

sources which emit or have the potential to emit at least 100 tpy of any nonattainment pollutant or lesser amounts in certain nonattainment areas) anywhere in a nonattainment area, in accordance with section 173 of the Act.[6] In nonattainment areas, a presumption exists that emissions increases resulting from new and modified major stationary sources will adversely affect the area; thus, in lieu of a complete air quality impact analysis (including ambient monitoring), emissions reductions (offsets) from existing sources must be obtained in order to mitigate the ambient impacts resulting from the potential emissions from the proposed new source, or net emissions increase from a proposed major modification to an existing source (e.g., section 173(c) of the Act).

Under the nonattainment NSR program (40 CFR 51.165(a)), EPA uses significant emissions rates (expressed in tons per year) for pollutant applicability purposes to determine whether a modification of an existing major stationary source will result in a significant net emissions increase (§ 51.165(a)(1)(x)). For the same reasons described in section V.C of this preamble, EPA does not now intend to propose to revise the significant emissions rate for SO_2 commensurate with the 5-minute SO_2 NAAQS proposed in the part 50/53 document. Public comment is requested as to whether the existing 40 tpy significant emissions rate needs to be revised if EPA promulgates the proposed 5-minute SO_2 standard.

Major new or modified sources locating in the nonattainment area will be required to meet the lowest achievable emission rate, obtain emissions offsets, and satisfy other applicable requirements under section 173 of the Act. With implementation of a new 5-minute NAAQS, these requirements may be addressed by existing permit programs for those areas already designated nonattainment for SO_2 and meeting the nonattainment NSR requirements under section 173 of the Act. However, for those States without the appropriate nonattainment NSR program, the State would need to develop and implement such a program for any newly designated nonattainment areas resulting from a new 5-minute NAAQS for SO_2.

[6] For purposes of the nonattainment NSR requirements under part D of title I of the Act, ''major stationary source'' is defined as any stationary source which emits, or has the potential to emit, 100 tpy (or lesser amounts in certain nonattainment areas) of any nonattainment pollutant (see, e.g., sections 182(c–e), 189(b)(3), and 302(j) of the Act).

g. *Contingency Measures.* Section 172(c)(9) of the amended Act defines contingency measures as measures that become effective without further action by the State or EPA, upon determination by EPA that the area has failed to: (1) Make reasonable further progress, or (2) attain the SO_2 NAAQS by the applicable statutory deadline.

For current SO_2 programs, EPA interprets ''contingency measures'' to mean that the State agency has a comprehensive program to identify sources of violations of the SO_2 NAAQS and to undertake an aggressive followup for compliance and enforcement, including expedited procedures for establishing enforceable consent agreements pending the adoption of revised SIP's. The rationale for this interpretation as presented in the General Preamble (57 FR 13547) is the following. The EPA interprets the contingency measure provisions as primarily directed at general programs which can be undertaken on an areawide basis. First, for some criteria pollutants, the analytical tools for quantifying the relationship between reductions in emissions and resulting air quality improvements remain subject to significant uncertainties, in contrast with procedures for pollutants such as SO_2 and its current NAAQS. Second, emission estimates and attainment analyses can be strongly influenced by overly optimistic assumptions about control efficiency and rates of compliance for many small sources. In contrast, controls for the current SO_2 NAAQS are well understood and are far less prone to uncertainty. Since SO_2 control measures are by definition based upon what is directly and quantifiably necessary to attain the SO_2 NAAQS, it would be unlikely for an area to implement the necessary emissions control yet fail to attain the NAAQS.

However, for the proposed 5-minute SO_2 NAAQS, EPA will need to interpret requirements for contingency measures different from those for the current NAAQS, due to the nature of sources and emissions that EPA considers likely to cause violations. As opposed to the current NAAQS, which can rely on dispersion models to predict attainment of the NAAQS, the State and Local agencies cannot reliably predict that attainment will be achieved even with proper implementation of a control program. It is possible that even with the control equipment operating properly, violations may persist. In other words, there may be overly optimistic assumptions about control efficiencies and emission rates. Therefore, contingency measures for the proposed 5-minute NAAQS will require more than aggressive follow-up for compliance and enforcement as allowed for the current SO_2 NAAQS. As an example, if the cause of the SO_2 violations is due to control equipment failure, a SIP may require a more rigorous maintenance schedule. If further violations occur due to continued failures of the control equipment, then the contingency measures may need to invoke a more frequent inspection/maintenance program of the control equipment or even installation of backup control equipment.

E. SIP Processing Requirements

1. SIP Completeness

Section 110(k)(1) required EPA to promulgate minimum criteria that any SIP submittal must meet. The EPA proposed an initial set of completeness criteria at 56 FR 23826 (May 24, 1991) and finalized them at 56 FR 42216 (August 26, 1991). Those notices describe the procedures for assessing whether a SIP submittal is complete and, therefore, adequate to trigger the Act requirement that EPA review and take action on the submittal. The completeness criteria provide a procedure and criteria that enable States to prepare adequate SIP submittals and enable EPA reviewers to promptly screen SIP submittals, identify those that are incomplete, and return them to the State for corrective action without having to go through rulemaking. The EPA intends to use the completeness criteria as amended in 40 CFR part 51, appendix V, to determine completeness of SIP submittals as required under section 110(k)(1)(B).

2. Approval/Disapproval of Plan

The Act as amended in 1990 allows for EPA to make full and partial approvals and disapprovals under section 110(k)(3) and conditional approvals under section 110(k)(4) of SIP submittals. In meeting the requirements under section 110(k)(3) and (4), EPA intends to follow the guidance for processing SIP submittals issued in the memo from Calcagni to the Regional Air Division Directors dated July 9, 1992.

3. Sanctions and Other Consequences of SIP Deficiencies

The EPA intends to use sanctions consistent with the following stated policies and regulations as provided for by the Act in sections 110(m) and 179 for the imposition of sanctions in the event that EPA finds that a State did not make a required SIP submission (in whole or in part), finds that a State did not submit a complete submission,

disapproves in whole or in part a required submission, or finds that any part of an approved SIP is not being implemented. Section 179(a) provides for the imposition of mandatory sanctions unless the deficiency identified by EPA (e.g., the failure to submit or disapproval) is corrected within 18 months. Moreover, section 110(m) provides EPA with the discretionary authority to impose sanctions at any time after a finding, disapproval or determination under section 179(a).

With respect to mandatory sanctions, section 179(a) provides that unless the State corrects the deficiency within 18 months, one of the two sanctions referred to in section 179(b) (i.e., highway or offset sanctions) shall be selected by EPA and will apply until EPA determines that the State has come into compliance. (In the case of a finding of failure to submit a required SIP revision, the sanctions would not be lifted until EPA determines that the State has submitted a SIP revision that satisfies the completeness criteria.) If 6 months after the imposition of the first sanction the State still has not corrected the deficiency, then the second sanction shall apply as well. If EPA finds a lack of good faith on the part of the State, then both the highway and offset sanctions are applied 18 months after the finding or disapproval.

The EPA has discussed in detail issues concerning the imposition of sanctions in a number of Federal Register notices. The criteria for imposing discretionary sanctions on a statewide basis are discussed in a February 11, 1994 Federal Register notice, Criteria for Exercising Discretionary Sanctions Under Title I of the Clean Air Act (59 FR 1476), and are codified at 40 CFR 52.30. The preamble to this notice also sets forth EPA's policy with respect to section 110(m) sanctions. Mandatory sanctions were discussed in a October 1, 1993 proposal (58 FR 51270) and in the August 4, 1994 final rule (59 FR 39832) selecting the order of mandatory sanctions under section 179. That final rule does not apply to State failures to respond to SIP calls. The EPA intends to address sanctions for such failures in a future rulemaking.

Apart from sanctions under sections 110(m) and 179(b), other consequences may also attach to a failure to comply with the Act's SIP submission or implementation requirements. First, section 179(a) authorizes EPA to withhold all or part of section 105 grants for air pollution control planning and control programs. Second, section 110(c)(1)(B) provides that within 2 years of a finding that a State has failed to make a required submittal, a finding that a required submittal was not complete, or a disapproval of a submission (in whole or in part), EPA shall promulgate a FIP unless EPA approves a submitted SIP that corrects the deficiency. In support of this requirement, EPA intends to use its authority to withhold all or part of section 105 grants to develop and implement FIP's where a State fails to comply with the Act's SIP submission or implementation requirements.

VI. Significant Harm Levels and Episode Criteria

In a notice published in the Federal Register on April 26, 1988 (53 FR 14926), in which the EPA proposed not to revise the SO_2 NAAQS, the EPA at the same time proposed to revise the significant harm levels for SO_2. Since final action was never taken on that proposal, EPA is reproposing to revise the 24-hour significant harm levels.

Section 303 of the Act authorizes the Administrator to take certain emergency actions if pollution levels in an area constitute ''an imminent and substantial endangerment to public health or welfare, or the environment.'' The Act and EPA's regulations governing adoption and submittal of SIP's (section 110(a)(2)(G) and 40 CFR 51.16 and subpart H of part 51) require States to adopt contingency plans to prevent ambient pollutant concentrations from reaching specified significant harm levels and to take additional abatement actions if such levels are reached. The existing significant harm levels (40 CFR 51.16a) for SO_2 were established in 1971 (36 FR 24002, November 21, 1971) at the following levels: SO_2 alone—1.00 ppm (2620 μg/m^3) 24-hour average of SO_2; and $SO_2 \times$ tsp—490 × 103 (μg/m^3) 2—24-hour average product of SO_2 and tsp concentrations.

On the basis of EPA's reassessment of the data upon which these levels were based and its assessment of more recent scientific evidence on sulfur oxides and particulate matter, EPA proposes to revise the significant harm levels for SO_2.

In actions related to the revisions of the particulate matter standards, EPA has already eliminated the combined tsp/SO_2 significant harm level (52 FR 24672, July 1, 1987). In doing so, EPA left open the possibility of reinstating an SO_2/PM–10 significant harm level, if necessary for additional protection against SO_2 effects, at the conclusion of the SO_2 review. The scientific data suggest that SO_2 in combination with high levels of particulate matter have been associated with increases in daily mortality. The final 24-hour PM–10 significant harm level of 600 μg/m^3 takes this potential interaction into account. Addition of a combined SO_2/PM–10 significant harm level therefore appears unnecessary.

Removal of the combined significant harm level raises the question as to whether the remaining SO_2 significant harm level is sufficient. The possibility that SO_2 alone or in combination with other pollutant or fog droplets may be in part responsible for the effects associated with 24-hour exposures suggests the need to continue a 24-hour significant harm level for SO_2 alone at a substantially lower concentration. The EPA's assessment of studies of daily mortality (EPA, 1986a, Table 1 and EPA, 1986b Table 4–2) indicates greatest certainty of some increased daily mortality associated with high particle concentrations in combination with SO_2 levels at or above 750 μg/m^3 (0.29 ppm) for 24-hours. Accordingly, EPA proposes to revise the 24-hour SO_2 significant harm level from 1.0 (2,620 μg/m^3) to 0.29 ppm (750 μg/m^3).

Appendix L to part 51 contains example air pollution episode levels and example contingency plans for the purpose of preventing air pollution from reaching the significant harm levels prescribed in section 51.151. The examples in appendix L serve as guides to States for the development of their own contingency plans. To conform with the proposed revisions to the significant harm level for SO_2, certain changes to appendix L are required. The EPA proposes the following revisions to the example 24-hour episode levels for SO_2:

(1) That the example alert level for SO_2 be changed from 800 μg/m^3 to 0.19 ppm (500 μg/m^3), 24-hour average.

(2) That the example warning level for SO_2 be changed from 1600 μg/m^3 to 0.23 ppm (600 μg/m^3), 24-hour average.

(3) That the example emergency level for SO_2 be changed from 2100 μg/m^3 to 0.26 ppm (675 μg/m^3), 24-hour average.

The basis for changing the episode levels for SO_2 is the same as discussed above for the revisions to the significant harm level. With respect to example episode levels, the proposed alert level reflects the upper bound of the 24-hour range of interest for the NAAQS presented in the staff paper addendum (EPA, 1986b, Table 2). The staff paper concludes that at or above 0.19 ppm (500 μg/m^3) for 24 hours, health effects are likely to occur in certain sensitive population groups (EPA, 1982a, page 72). Therefore, it would be appropriate under the episode criteria to initiate first stage control action when this ambient level of SO_2 occurs. The proposed 24-

hour warning and emergency levels are set at increments between the proposed alert level and the proposed significant harm level. This approach would provide opportunity for the control actions associated with each episode level to take effect before the next stage is triggered and additional control actions become necessary. This proposal, if adopted, would change the 24-hour significant harm level. Therefore, States would be required to adopt the new numerical level, to evaluate the emergency episode provisions, in their current SIP's and any permits containing such provisions and to make any revisions necessary to assure their adequacy.

All public comments on the proposed significant harm level and episode criteria will be considered by the Agency as it makes a decision on the final significant harm level.

VII. Proposed Revisions to Part 58 Monitoring Regulations

The proposed revisions to 40 CFR part 58 are needed to allow States to reduce in most cases the number of NAMS SO_2 monitors in the metropolitan areas. This, in turn, will free up monitors and resources that can be used toward the SO_2 targeted implementation strategy. The following preamble details requirements which will be implemented regardless of the regulatory alternative that is ultimately selected for part 50.

A. Section 58.1 Definitions

The number of SO_2 monitors in the revised NAMS network for major metropolitan areas will be based on factors including population, historical ambient concentration measurements, and total SO_2 emissions. The SO_2 emissions data are available from the AIRS for each county and for each consolidated metropolitan statistical area/metropolitan statistical area (CMSA/MSA). Therefore, the requirements for NAMS SO_2 stations have been determined on a CMSA/MSA basis, and the requirements for SLAMS SO_2 stations have been determined on a county basis. Definitions are added for CMSA and MSA as provided by the U.S. Census Bureau.

B. Appendix C—Ambient Air Quality Monitoring Methodology

As explained in a related notice in this issue of the Federal Register that proposes amendments to part 53, continuous ambient air monitoring analyzers designed to obtain 1-hour average SO_2 concentration measurements may not provide accurate 5-minute average concentration measurements. That notice proposes special supplemental performance specifications applicable to continuous SO_2 analyzers that would be used for 5-minute monitoring so that the average SO_2 concentration measurements would be accurate. A companion amendment to appendix C of part 58 is needed to specifically require the use of these specially approved analyzers for 5-minute monitoring in SLAMS monitoring networks. Accordingly, a new section 2.4 is proposed to require that monitoring methods used for 5-minute average SO_2 measurements meet the special supplemental specifications proposed to be added to part 53.

C. Appendix D—Network Design for State and Local Air Monitoring Stations (SLAMS) and National Air Monitoring Stations (NAMS)

Appendix D is being revised to change the NAMS requirements for SO_2 monitors. The present requirements are based on measuring population exposure over a large area without being unduly influenced by point sources. Because concentrations at a significant number of these sites have decreased over time and many are measuring concentrations well below the current SO_2 NAAQS, EPA believes that they may be put to better use if relocated. The monitors which may be moved could be used to complete the minimum NAMS and SLAMS requirements or to implement the targeted monitoring strategy for point sources of SO_2 emissions described earlier in this notice (section II: Targeted Implementation Strategy). Up to three SO_2 monitors would be required for each metropolitan area for trends purposes and general urban air quality analyses. The new number of NAMS monitors required for each metropolitan area would be based on the combination of population and SO_2 emissions, as defined in the Air Facility Subsystem of AIRS and other information. The EPA solicits comments on reducing the requirements for the number of population-oriented NAMS SO_2 monitors in the metropolitan areas.

In addition to changing the criteria for the required number of NAMS monitors as noted above, new criteria are being included for a minimum number of SLAMS SO_2 monitors for those counties (or parts of counties) not a part of any CMSA/MSA but with significant SO_2 emissions. These counties with SO_2 emissions greater than 20,000 tons/year, as defined in the Air Facility Subsystem of AIRS, would be required to have one to two monitors. However, EPA is proposing a provision which would allow for a waiver of all (or part of) these monitoring requirements after a 2-year monitoring period in accordance with EPA guidelines for network review for source-oriented SO_2 monitoring in nonurban areas. Although these guidelines have not been developed at this time, EPA solicits comments on the waiver provision criteria to be established and included in the guideline as well as the minimum number of years for data collection. The EPA also solicits comments on the requirement for SO_2 SLAMS monitors in these areas.

As discussed earlier in this notice, EPA believes there are a significant number of sources of SO_2 emissions which can produce high 5-minute ambient concentrations of SO_2. These 5-minute concentrations have the potential to exceed the level for a proposed 5-minute SO_2 NAAQS or the trigger level which may be established under the authority of section 303 of the Act. The sources which are believed to provide these high concentrations would be targeted for monitoring as discussed earlier in this notice. States will be required to prepare a targeted SO_2 monitoring plan containing a listing of sources to be monitored, the schedule for monitoring, and the rationale for selecting the sources. The schedule for monitoring should be as expeditious as practicable. It is expected that the resources which are made available by the reconfiguration of the NAMS and SLAMS networks will be used to implement the targeting strategy around selected SO_2 sources. The targeted SO_2 monitoring plan will be reviewed as part of the annual network review.

The number of SO_2 monitors to be used around the targeted sources depends on several diverse factors, i.e. quantity of SO_2 emissions, meteorology, terrain, stack height and diameter of stack, temperature and velocity of stack emissions, distance from point of emissions to fence line and populated areas, batch operations, etc. To capture high peak 5-minute concentrations may require many monitors around the sources (Sonoma Technology Inc., 1994). However, it is not economically feasible to place enough monitors around the source to capture all potential exceedances of the NAAQS or trigger level. Therefore, EPA is using a more moderate approach on the number of monitors required.

The EPA is proposing a minimum requirement of four SO_2 monitors to measure 5-minute, 3-hour, 24-hour, and annual average SO_2 concentrations around the targeted sources. These monitors could be point SO_2 monitors, open path SO_2 analyzers, or a combination of both. If open path

analyzers with multiple monitoring paths are used, each monitoring path could potentially be substituted for one point SO_2 monitor. Modeling, and perhaps saturation monitoring (a short term study involving the use of portable monitors deployed around the source), could be used to determine the area of expected maximum concentration based on the most predominant wind direction. One monitor would be placed at the fence line downwind of the predominant wind direction. A second monitor would be placed in the modeled maximum concentration area based on the predominant wind direction. Since wind directions around an SO_2 source may be significantly different from one season to another, this same procedure would be repeated for the second most frequent wind direction. For some cases, two or more of these locations may coincide and thereby reduce the number of monitors, or allow for a State or local agency to locate sites in alternative locations. In other cases, additional monitors would probably be needed for situations of complex terrain and/or meteorology. The EPA also encourages the use of open path SO_2 analyzers in combination with point SO_2 monitors to obtain better spatial coverage around the targeted sources. One open path SO_2 analyzer using multiple monitoring paths could potentially replace several of the point SO_2 monitors, depending on factors such as meteorology, terrain, and obstructions. Open path analyzers may be particularly useful in assessing ambient SO_2 concentrations over large populated areas, such as parks and recreation centers, where people are expected to jog/exercise. The EPA solicits comments on the location, number and type of SO_2 monitors, the various available monitoring technologies, and the need to waive minimum monitoring requirements.

The concentration gradients are expected to be sharper around these targeted sources of SO_2 emissions. As a result, the SO_2 monitors located to measure population exposures over a wide area are unlikely to adequately characterize these peaks. Therefore, appendix D is being revised to allow the use of microscale SO_2 sites for SLAMS monitors, and to encourage middle/neighborhood scale measurements as appropriate in populated areas near these targeted sources. The microscale measurements for SO_2 would represent concentrations over an area ranging from several meters to up to about 100 meters. The EPA solicits comments on the use of micro, middle, and neighborhood scale monitors, both point monitors and/or open path analyzers, around point sources of SO_2 emissions.

The EPA is also proposing that the SO_2 monitors around these targeted sources of SO_2 emissions be classified as SLAMS monitors. Section 2.3 requires that monitoring be performed for a minimum of 2 years. After that time, a decision should be made during the annual network review as to whether the monitoring should be continued around the targeted source, or the monitors redeployed around a different targeted source based on measured concentration levels, changes in plant process operations, etc. The EPA solicits comments on the SLAMS classification of the SO_2 monitors around the targeted sources and a waiver provision to relocate the monitors before the full 2 years based on a review of the data.

With this proposal, EPA is also requiring the collection of 5-minute SO_2 concentrations at the targeted sites. The EPA solicits comment on the need to require 5-minute concentrations at NAMS or other SLAMS sites, and if supplementary criteria should be considered for this additional request (e.g., require 5-minute SO_2 monitor data if 1-hour concentration exceeds some level).

D. Appendix F—Annual SLAMS Report

A proposed revision to section 2.1.1 of appendix F would reword this section to provide greater clarity and add a requirement to report the number of 5-minute hourly maximum observations. Section 2.1.2 would similarly be reworded for clarity and to require that the 24-hour averages reported in the annual report for SO_2 be based on block (midnight to midnight) averaging periods and the 3-hour averages also to be based on block averaging periods. Reporting of the number of values in specified ranges of 24-hour average concentrations would be deleted because of new revisions to 40 CFR part 58 data reporting requirements.

Reporting of 5-minute hourly maximums would also be added. The EPA solicits comments on the need for reporting additional summary data if a multiple exceedance form of the standard is adopted.

E. Appendix G—Air Quality Index Reporting and Daily Reporting

The EPA proposes to revise the SO_2 ambient concentrations contained in Tables 1 and 2 and in Figure 3 to correspond to the proposed new episode criteria and significant harm levels.

VIII. Transition Issues

Since the existing NAAQS would be retained even if a 5-minute NAAQS is promulgated, all existing requirements and attainment dates will remain in place as to the existing NAAQS.

IX. Other Clean Air Act Amendment Authorities Affecting SO_2 Sources

The EPA is also developing a voluntary program as part of the acid rain program to encourage nonutility sources to reduce their emissions of SO_2. The voluntary entry into the acid rain program, known as the opt-in program, allows nonaffected sources (nonaffected under title IV), the opportunity to receive their own allowances, undertake emission reductions and trade the extra allowances they would no longer need for compliance with the acid rain program. Again, such participating sources would be under the same obligations to meet all other air regulatory requirements.

These nonutility sources that could participate in the opt-in program are the same group of sources of concern for establishing a 5-minute SO_2 NAAQS. Assuming entry occurred prior to the imposition of the 5-minute standard, the source could accelerate its emissions reductions and offset the cost of such reductions through participation in the opt-in program. The EPA believes the development of options for a 5-minute SO_2 standard and the opt-in program protects public health and provides an opportunity for cost reduction.

X. Public Participation

A. Comments and the Public Docket

The EPA welcomes comments on all aspects of this proposed rulemaking. Commenters are especially encouraged to give suggestions for changing any aspects of the proposal that they find objectionable. All comments, with the exception of proprietary information, should be directed to Docket No. A–94–55 with regard to part 51 and Docket No. A–94–56 with regard to part 58 (see **ADDRESSES**).

Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by: (1) Labeling proprietary information ''Confidential Business Information,'' and (2) sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket.

This will help ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission labeled as

confidential business information as part of the basis for the final rule, then a nonconfidential version of the document, which summarizes the key data or information, should be sent to the docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, the submission may be made available to the public without notifying the commenters.

B. Public Hearing

Anyone who wants to present testimony about this proposal at the public hearing (see **DATES**) should, if possible, notify the contact person (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the day of the hearing. The contact person should be given an estimate of the time required for the presentation of testimony and notification of any need for audio/visual equipment. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling those who have not notified the contact earlier. This testimony will be scheduled on a first-come, first-serve basis to follow previously scheduled testimony.

The EPA requests that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing at least 1 week before the scheduled hearing date. This is to give EPA staff adequate time to review such material before the hearing. Such advance copies should be submitted to the contact person listed.

The official records of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submissions should be directed to Docket No. A–94–55 with regard to part 51 and Docket No. A–94–56 with regard to part 58 (see **ADDRESSES**).

Joseph W. Paisie is hereby designated Presiding Officer of the hearing. The hearing will be conducted informally, and technical rules of evidence will apply. A written transcript of the hearing will be placed in the above docket for review. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceeding.

XI. Administrative Requirements

A. Regulatory Impact Analysis

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities , or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because of its potential to have an annual effect on the economy of $100 million or more as discussed in the related SO_2 NAAQS proposal package on November 15, 1994 (59 FR 58958). As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

The EPA has prepared a draft regulatory impact analysis (RIA) based on information developed by several EPA contractors. It includes estimates of costs, benefits, and net benefits associated with alternative SO_2 NAAQS. The draft analysis, entitled Regulatory Impact Analysis of the National Ambient Air Quality Standards for SO_2–Draft, is available from the address given above. The draft RIA estimates the cost for the short-term SO_2 NAAQS regulatory alternative. The cost estimate for the short-term SO_2 NAAQS alternative represent a snapshot of the estimated total industry costs that could be incurred at some unspecified time in the future following full implementation of a short-term SO_2 NAAQS. The costs are based on the use of add-on control devices and fuel switching to lower-sulfur fuels. Given that EPA believes that many sources will be able to reduce their peaks through other, nontechnological means, this assumption may result in overstating costs. With this caveat in mind, nonutility annualized costs are estimated to be approximately $250 million for an ambient SO_2 concentration for a 0.06 ppm, 5 annual exceedance concentration levels are estimated to be approximately $160 million. It is estimated that SO_2 will be reduced by approximately 910,000 tons, and 560,000 tons for 1 and 5 exceedance cases, respectively. Incremental to the title IV requirements and attainment of the existing SO_2 NAAQS, total utility annualized costs in 2005 are estimated to be an additional $1.5 billion for the 0.06 ppm, 1 expected exceedance case, and $400 million for the 5 expected exceedance case. Estimated total utility SO_2 emissions in 2005 are not expected to change given the title IV emissions trading program.

Administrative costs are estimated to be approximately $18 million for the short-term NAAQS regulatory alternative. Monitoring costs are estimated to be minimal.

However, EPA has not completed its cost analysis of the section 303 regulatory alternative which EPA believes will be less than the SO_2 NAAQS regulatory alternative. The EPA intends to complete this analysis and make it available to the public by the end of January 1995. The EPA will announce the availability of this analysis in the Federal Register as soon as it is available. A final RIA will be issued at the time of promulgation of final standards. Neither the draft RIA nor the other contractor reports have been considered in issuing this proposal.

The regulations, implementation of the revised SO_2 NAAQS, the retained existing NAAQS, and the section 303 program, have been submitted to OMB for review under Executive Order 12866. Any written comments from OMB and any EPA responses to those comments are in the public docket for this rulemaking.

B. Impact on Reporting Requirements

Air quality monitoring activities that would occur as a result of the SO_2 NAAQS proposal could increase the costs and man-hour burdens to State and local agencies for conducting ambient SO_2 surveillance required by 40 CFR part 58 and currently approved under OMB Control Number 2060–0084. Temporarily-increased costs could result from the relocation of some monitors currently operated as part of the SLAMS networks and from the purchase and operation of additional monitors in a small number of agencies.

However, some or all of these costs could be offset by savings in existing monitoring networks. As a result, to the extent that additional monitoring costs will be incurred at all, EPA expects that these costs will be minimal.

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request document has been prepared by EPA (ICR No.0940.11) and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M St., S.W. (Mail Code 2136), Washington, DC 20460, or by calling (202) 260–2740.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, EPA, 401 M St., S.W. (Mail Code 2136), Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Impact on Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C., 600 et seq, the Agency must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. Under 5 U.S.C. 605(b), this requirement may be waived if the Agency certifies that the rule will not have a significant economic effect on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

A decision to revise the current NAAQS for SO_2 or set a trigger level for implementation of a section 303 program would impose no new major requirements. It is expected that following the promulgation of a revised SO_2 NAAQS, additional nonattainment areas will be designated and will thus have to submit SIP revisions imposing additional control requirements on affected sources.

Furthermore, the control measures necessary to attain and maintain the NAAQS or implement a section 303 program are developed by the respective States as part of their SIP's. In selecting such measures, the States have considerable discretion so long as the mix of controls selected is adequate to attain and maintain the NAAQS or not exceed the section 303 trigger level. Whether a particular NAAQS would have a significant effect on a substantial number of small entities, therefore, depends on how the States would choose to implement it. For these reasons, any assessment performed by EPA on the costs of additional SIP requirements at this time would necessarily be speculative. On the basis of the above considerations and findings, and as required by section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the Administrator certifies that this regulation does not have a significant impact on a substantial number of small entities.

D. Reduction of Governmental Burden

Executive Order 12875 (''Enhancing the Intergovernmental Partnership'') is designed to reduce the burden to State, local, and tribal governments of the cumulative effect of unfunded Federal mandates. The Order recognizes the need for these entities to be free from unnecessary Federal regulation to enhance their ability to address problems they face and provides for Federal agencies to grant waivers to these entities from discretionary Federal requirements. The Order applies to any regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government. The EPA is required by statute to review periodically and, as necessary, revise the national ambient air quality standards, and to call on States to develop plans to attain and maintain these standards. However, this action also includes a request for comment on the adoption of a section 303 program, as well as a proposal to establish a targeted monitoring network, neither of these actions is explicitly mandated by statute. Therefore, in accordance with the purposes of Executive Order 12875, EPA will consult with representatives of State, local, and tribal governments to inform them of the requirements for implementing the alternative regulatory measures being proposed to address short-term peak SO_2 exposures. The EPA will summarize the concerns of the governmental entities and respond to their comments prior to taking final action.

The EPA anticipates that there will be no additional cost burden imposed on States in order to implement the monitoring requirements proposed in this notice. In general, costs incurred for relocating monitors will be offset by operating costs saved from discontinuing SLAMS and NAMS monitors. For more detail the reader is referred to the section on resource concerns for relocating monitors under the targeted implementation strategy section discussed earlier in this notice or to the supporting statement for the information collection request.

E. Environmental Justice

Executive Order 12898 requires that each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. The requirements of Executive Order 12898 have been addressed in the draft RIA cited above.

On average, approximately 25 percent of the total population and 14 percent of total households residing in geographic areas that are potentially impacted by short-term SO_2 peaks of 0.60 ppm or greater are nonwhite and below the poverty level, respectively. These estimates exceed the national averages of 19.7 percent and 12.7 percent, respectively. It also follows that, on average, 25 percent of the asthmatics potentially exposed to short-term SO_2 peaks of 0.60 ppm or greater are nonwhite. Upon closer examination, 44 percent of these potentially SO_2-impacted areas have a nonwhite population greater than the national average with 24 percent between 1 and 2 times greater, 10 percent between 2 and 3 times greater, 7 percent between 3 and 4 times greater, and 3 percent between 4 and 5 times greater.

Appendix A—References

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List of Subjects in 40 CFR Parts 51 and 58

Environmental protection, Administrative practices and procedure, Air pollution control, Intergovernmental relations, SO_2, Reporting and recordkeeping requirements, State implementation plans.

Dated: February 15, 1995.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend chapter I of title 40 of the Code of Federal Regulations as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401(a)(2), 7475(e), 7502 (a) and (b), 7503, 7601(a)(1) and 7602.

2. In § 51.151 of subpart H, the entry for ''Sulfur dioxide'' is revised to read as follows:

§ 51.151 Significant harm levels.

* * * * *

Sulfur dioxide—0.29 parts per million (750 micrograms/cubic meter), 24-hour average.

* * * * *

3. In appendix L to part 51, paragraphs 1.1 (b), (c), and (d) are amended by revising the entries for ''SO_2'' to read as follows:

Appendix L to Part 51—Example Regulations for Prevention of Air Pollution Emergency Episodes

* * * * *

1.1 * * *

(b) * * *

SO_2—0.19 ppm (500 μg/m^3), 24-hour average.

* * * * *

(c) * * *

SO_2—0.23 ppm (600 μg/m^3), 24-hour average.

* * * * *

(d) * * *

SO_2—0.26 ppm (675 μg/m^3), 24-hour average.

* * * * *

Subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act

4. Section 51.465 is added to Subpart T to read as follows:

§ 51.465 Contingency plans.

(a) Each plan must include a contingency plan which must, as a minimum, provide for taking action necessary to prevent further violations of the 5-minute trigger level for sulfur dioxide (SO_2) attributable to emissions from a source once one exceedance has occurred. The 5-minute trigger level is 0.60 parts per million (ppm), not to be exceeded more than once per calendar year, as determined in accordance with appendix Y to this part.

(b) Each contingency plan must provide that:

(1) Within 30 days of determination of a violation of the trigger level, the State shall carry out a compliance inspection of any source whose emissions may have resulted in or contributed to the violation of the trigger level.

(2) If the source is out of compliance with applicable SO_2 emission limits then, within 30 days of completing the compliance inspection in paragraph (b)(1) of this section, the State shall take enforcement action to bring the source into compliance.

(3) If the source is in compliance with applicable SO_2 emission limits then, within 60 days of completing the compliance inspection in paragraph (b)(1) of this section, the State shall develop and implement an enforceable emission reduction plan with a compliance schedule to address the cause of the emissions producing the trigger level violation. The schedule shall provide for implementation of all actions necessary to prevent further violations of the trigger level as expeditiously as practicable. This emission reduction plan must be submitted to EPA as a revision to their State implementation plan within 1 year of completing the compliance inspection in paragraph (b)(1) of this section.

(4) If in carrying out the compliance inspection referred to in paragraph (b)(1) of this section, the State determines that the source is out of compliance with its applicable SO_2 emission limits but also determines that bringing the source into compliance with its applicable emission limits would not be likely to prevent further exceedances of the trigger level, then the State and source shall develop and

implement an emission reduction plan as described in paragraph (b)(3) of this section.

5. Appendix Y is added to part 51 to read as follows:

Appendix Y to Part 51—Interpretation of the 5-Minute Trigger Level for Sulfur Dioxide

1.0 General

a. This appendix explains the computations necessary for analyzing sulfur dioxide data to determine whether the 5-minute trigger level specified in § 51.400(a), subpart T, has been exceeded and whether the 5-minute trigger level has been violated. Sulfur dioxide is measured in the ambient air by the reference method specified in appendix A of this part or an equivalent method designated in accordance with part 53 of this chapter.

b. Several terms used in this appendix must be defined. A ''5-minute hourly maximum'' for SO_2 refers to the highest of the 12 possible nonoverlapping 5-minute SO_2 averages calculated or measured during a clock hour. The term ''exceedance'' of the 5-minute trigger level concentration means a 5-minute hourly maximum value that is greater than the 5-minute trigger level after rounding to the nearest hundredth ppm (i.e., values ending in or greater than 0.005 ppm are rounded up; e.g., a value of 0.605 would be rounded to 0.61, which is the smallest value for an exceedance). The term ''year'' refers to a calendar year. The term ''quarter'' refers to a calendar quarter. The 5-minute SO_2 trigger level is expressed in terms of the number of expected exceedances per year by adjusting for missing data (if required) and by averaging over a 2-year period.

2.0 Trigger Level Determination

a. The 5-minute trigger level is not violated when the number of expected exceedances per year is less than or equal to one. In general, this determination is to be made by recording the number of 5-minute hourly maximum exceedances at a monitoring site for each year, using the calculations in section 3.2 to compensate for missing data (if required), averaging the number of exceedances over a 2-year period, and comparing the number of exceedances (rounded to the nearest integer) to the number of allowable exceedances.

b. Although it is necessary to meet the minimum data completeness requirements to use the computational formula described in section 3.2, this criterion does not apply when there are obvious exceedance situations which contribute to a violation. For example, when a site fails to meet the completeness criteria, violation of the 5-minute trigger level can still be established on the basis of the observed number of exceedances in a year (e.g., three observed exceedances in a single year).

3.0 Calculations for the 5-Minute Trigger Level

3.1 Calculating a 5-Minute Hourly Maximum

A 5-minute hourly maximum value for SO_2 is the highest of the 5-minute averages from the 12 possible nonoverlapping periods during a clock hour. These 5-minute values shall be rounded to the nearest hundredth ppm (fractional values equal to or greater than 0.005 ppm are rounded up). A 5-minute maximum shall be considered valid if: (1) 5-minute averages were available for at least 9 of the 12 5-minute periods during the clock hour, or (2) the value of the 5-minute average exceeds the level of the 5-minute trigger level.

3.2 Calculating Expected Exceedances for a Year

a. Because of practical considerations, a 5-minute maximum SO_2 value may not be available for each hour of the year. To account for the possible effect of incomplete data, an adjustment must be made to the data collected at a particular monitoring location to estimate the number of exceedances in a year. The adjustment is made on a quarterly basis to ensure that the entire year is adequately represented. In this adjustment, the assumption is made that the fraction of missing values that would have exceeded the trigger level is identical to the fraction of measured values above this level.

b. For all NAMS and SLAMS sites that report 5-minute SO_2 data, the computation for incomplete data is to be made for all sites with 50 to 90 percent complete data in each quarter. If a site has more than 90 percent complete data in a quarter, no adjustment for missing data is required. If a site has less than 50 percent complete data in a quarter, no adjustment for missing data is required and the observed exceedances are used.

c. The estimate of the expected number of exceedances for the quarter is equal to the observed number of exceedances plus an increment associated with the missing data.

1. The following formula must be used for these computations:

$$e_q = v_q + [(v_q/n_q) \times (N_q - n_q)] = v_q \times N_q/n_q \quad [1]$$

Where:

e_q=the expected number of exceedances for quarter q,

v_q=the observed number of exceedances for quarter q,

N_q=the number of hours in quarter q, and

n_q=the number of hours in the quarter with valid 5-minute hourly SO_2 maximums

q=the index for each quarter, q=1, 2, 3 or 4.

2. The expected number of exceedances for the quarter must be rounded to the nearest hundredth (fractional values equal to or greater than 0.005 are rounded up).

d.1. The expected number of exceedances for the year, e, is the sum of the estimates for each quarter.

$$e = \sum_{q=1}^{4} e_q$$

2. The expected number of exceedances for a single year must be rounded to one decimal place (fractional values equal to or greater than 0.05 are rounded up).

e. The number of exceedances is then estimated by averaging the individual annual estimates over a 2-year period, rounding to the nearest integer, and comparing with the allowable exceedance rate of one per year (fractional values equal to or greater than 0.5 are rounded up; e.g., an expected number of exceedances of 1.5 would be rounded to 2, which is the lowest value for violating the trigger level.

f. *Example.*

1. During the most recent quarter, 1210 out of a possible 2208 5-minute hourly maximums were recorded, with one observed exceedance of the 5-minute trigger level. Using formula [1], the expected number of exceedances for the quarter is:

e_q = 1 x 2208/1210 = 1.825 or 1.83

2. If the expected exceedances for the other 4 quarters were 0.0, then using formula [2], the expected number of exceedances for the year is:

1.83 + 0.0 + 0.0 + 0.0 = 1.83 or 1.8

3. If the expected number of exceedances for the previous year was 0.0, then the expected number of exceedances is estimated by:

(1.8 + 0.0)/2 = 0.9 or 1

4. Since 1 is not greater than the allowable number of exceedances, this monitoring site would not violate the trigger level.

PART 58—AMBIENT AIR QUALITY SURVEILLANCE

1. The authority citation for part 58 continues to read as follows:

Authority: Secs 110, 301(a), and 319 of the Clean Air Act as amended, (42 U.S.C. 7410, 7601(a), and 7619).

2. Section 58.1 is amended by adding and reserving paragraphs (aa) through (hh) and by adding paragraphs (ii) and (jj) to read as follows:

§ 58.1 Definitions.

* * * * *

(ii) ''Metropolitan Statistical Area'' means the most recent area as designated by the U.S. Office of Management and Budget and population figures from the U.S. Bureau of the Census. The Department of Commerce defines a metropolitan area as ''one of a large population nucleus, together with adjacent communities which have a high degree of economic and social integration with that nucleus.'' [1]

(jj) ''Consolidated Metropolitan Statistical Area'' means the most recent area as designated by the U.S. Office of Management and Budget and population figures from the Bureau of

[1] U.S. Bureau of the Census, ''Statistical Abstract of the United States: 1993'', (113th Edition), Washington, DC (1993).

the Census. The Department of Commerce provides ''that within metropolitan complexes of 1 million or more population, separate component areas are defined if specified criteria are met. Such areas are designated primary metropolitan statistical areas (PMSA's); and any area containing PMSA's is designated a consolidated metropolitan statistical area (CMSA).'' [2]

* * * * *

3. In appendix C to part 58, section 2.4 is added to read as follows:

Appendix C—Ambient Air Quality Monitoring Methodology

* * * * *

2.4 A monitoring method for SO_2 used for obtaining 5-minute average concentrations in connection with targeted monitoring of an SO_2 source likely to produce short-duration, high-level concentration peaks must be a designated reference or equivalent method as defined in § 50.1 of this chapter and must meet the supplemental specifications for 5-minute monitoring given in table B–1 of part 53 of this chapter.

* * * * *

4. In appendix D to part 58, section 1, the last two sentences of the third paragraph are removed, and replaced by four new sentences to read as follows:

Appendix D—Network Design for State and Local Air

Monitoring Stations (SLAMS), National Air Monitoring Stations (NAMS), and Photochemical Assessment Monitoring Stations (PAMS)

* * * * *

1. * * *

* * * It should be noted that this appendix contains no criteria for determining the total number of stations in SLAMS networks. A minimum number of lead SLAMS is prescribed as well as a minimum required number of SO_2 SLAMS for those counties not within the boundaries of any CMSA/MSA. Also, a minimum required number of SO_2 SLAMS is listed for targeted sources of SO_2 emissions. The optimum size of a particular SLAMS network involves trade-offs among data needs and available resources which EPA believes can best be resolved during the annual network design review process.

* * * * *

§ 2.3 [Amended]

5. In appendix D, the first paragraph of section 2.3 is revised, and a new paragraph is added between the first and second paragraphs to read as follows:

* * * * *

2. * * *

2.3 * * *

The spatial scales for SO_2 SLAMS monitoring are the micro, middle, neighborhood, urban, and regional scales. The most important spatial scales to effectively characterize the emissions of SO_2 from stationary sources are the micro, middle, and neighborhood scales. Because of the nature of SO_2 emissions and the nature of distributions over metropolitan areas, the neighborhood scale is the most likely scale to be represented by a single measurement in the metropolitan area where the concentration gradients are less steep, but only if the undue effects from local sources (minor or major point sources) can be eliminated. Urban scales would represent areas where the concentrations are uniform over a larger geographical area. Regional scale measurements would be associated with rural areas and urban background measurements.

Microscale—Emissions from stationary sources may, under certain plume conditions, result in high 5-minute and 24-hour ground level concentrations at the microscale level. The microscale measurements would represent an area impacted by the plume with dimensions extending up to approximately 100 meters.

* * * * *

6. In appendix D, section 2.3, a sentence is added to the end of the paragraph titled ''Middle Scale'' to read as follows:

* * * * *

2.3 * * *

Middle Scale * * * Emissions from stationary sources that cover larger geographic areas may also result in high 5-minute and 24-hour SO_2 concentrations.

* * * * *

7. In appendix D, section 2.3, a sentence is added to the last paragraph to read as follows:

* * * * *

2.3 * * *

* * * The use of SO_2 saturation monitors is encouraged to determine the areas of maximum concentration from sources of SO_2 emissions as an aid to locating reference or equivalent SO_2 monitors.

* * * * *

8. In appendix D, § 2.3, seven new paragraphs are added at the end of this section to read as follows:

* * * * *

The required number of sites needed to measure SO_2 concentrations for population exposure in the metropolitan areas of the counties are discussed in section 3.2 of this appendix. However, there may be significant point source emissions in other counties which are not within the geographic boundaries of any CMSA/MSA. To determine the SO_2 concentrations and exposures for these counties, a minimum number of SLAMS SO_2 monitors will be required. Table 2 shows the minimum required number of SLAMS SO_2 monitors for those counties which are not a part of any CMSA/MSA and also have SO_2 emissions greater than 20,000 tons/year as defined in the Air Facility Subsystem of AIRS.

TABLE 2—STATE AND LOCAL AIR MONITORING STATIONS CRITERIA

Area	SO_2 emissions (tons/year)	Minimum number of SO_2 stations
Counties (or parts of counties) not included in any CMSA/MSA	>100,000	2
	20,000–100,000	1
	<20,000	0

Monitors located to meet this requirement would generally be either middle or neighborhood scale of representativeness to measure population exposure. The monitors are not necessarily required to be located in the county where the SO_2 emissions originate, but should be located in the maximum concentration area. The maximum concentration area may be determined by modeling the SO_2 emission sources and/or in combination with SO_2 saturation monitoring studies.

The EPA will consider a request to waive all or part of these requirements for these areas. If monitoring has been conducted for a minimum of 2 years and the measured concentrations were low, then EPA will consider a request to waive all or part of the monitoring requirement in accordance with EPA guidelines.

In addition to the above requirement for SO_2 monitors, SLAMS monitors are required to be deployed around targeted sources of SO_2 emissions in order to produce 5-minute, 3-hour, 24-hour, and annual average concentration measurements. A listing of which sources are to be monitored, the schedule for monitoring, and the rationale for selecting the sources shall be prepared by the State in a targeted SO_2 monitoring plan to be reviewed as part of the annual SLAMS network review. The implementation of this plan will be as expeditious as practicable.

To adequately monitor and characterize air quality around point sources of SO_2 emissions would require multiple point monitors or open path analyzers (or a combination of both). Financial and practical

[2] See footnote 1 in paragraph (ii) of this section.

constraints may prohibit the deployment of large numbers of SO_2 monitors around these targeted sources. Therefore, a modest network with a minimum requirement of four SO_2 monitors around each targeted source will be used. If open path analyzers with multiple paths are used, each monitoring path could potentially be substituted for one point SO_2 monitor. Modeling and/or saturation sampling may be used to determine the general area(s) of expected maximum SO_2 concentrations based on the most predominant wind direction. One monitor will be located at the fence line downwind of the most predominant wind direction, and a second monitor will be located in the modeled maximum concentration area based on the most predominant wind direction. Since wind directions frequently change from one season to another, the second most predominant wind direction will be used to locate the second pair of monitors. The third monitor will be located at the fence line downwind of the second most predominant wind direction, and the fourth monitor will be located in the modeled maximum concentration area based on the second most predominant wind direction. However, for situations where there is complex terrain and/or meteorology, additional monitors may be required to adequately monitor the emissions.

In some cases, it is simply not practical to place monitors at the indicated modeled locations of maximum concentrations. Some examples may include locations over open bodies of water, on rivers, swamps, cliffs, etc. The EPA Regional Offices and the State or local air pollution control agencies should determine alternative locations and alternative network designs on a case-by-case basis.

The use of SO_2 monitoring around targeted sources of SO_2 emissions is intended to capture high 5-minute peak concentrations as well as exceedances of the 3-hour, 24-hour, and annual mean standards for SO_2. However, there will be cases where this monitoring strategy will be implemented around the targeted sources of SO_2 emissions, and the resulting measured SO_2 concentrations will be low. Therefore, SO_2 monitoring around a targeted source must be conducted for a minimum of 2 years to account for factors such as year-to-year variability in meteorology, change of plant processes, etc. If monitoring has been conducted for a minimum of 2 years, and the concentrations were low, then a decision could be made in the annual SLAMS network review between the EPA Regional Office and the State or local air pollution control agency to move the SO_2 monitors to another targeted source of SO_2 emissions. In general, it is more important to monitor around another targeted source of SO_2 emissions than to retain monitors around a source with demonstrated low SO_2 concentrations.

9. In appendix D, the first two sentences of the first paragraph of section 3 are removed and the following two sentences are added to read as follows:

* * * * *

3. * * *

The NAMS must be stations selected from the SLAMS network with emphasis given to urban and multisource areas. Areas to be monitored must be selected based on the CMSA/MSA population and pollutant emission concentration levels as defined in the Air Facility Subsystem of AIRS. * * *

* * * * *

10. In appendix D, the first paragraph in section 3.2 and Table 3 are revised to read as follows:

* * * * *

3.2 Sulfur Dioxide (SO_2) Design Criteria for NAMS.

It is desirable to have several NAMS in the more polluted and densely populated urban and multisource areas to characterize the national and regional SO_2 air quality trends and geographical patterns. Table 3 shows the required number of NAMS monitors in the metropolitan areas to accomplish this purpose. These neighborhood scale monitoring stations (which would be located within the boundaries of the CMSA/MSA) would normally be classified as category (a) or (b) as discussed in section 3. The actual number and location of the NAMS must be determined by the EPA Regional Office and the State agency, subject to the approval of EPA Headquarters (OAR).

TABLE 3.—NATIONAL AIR MONITORING STATION CRITERIA

CMSA/MSA population	SO_2 emissions (tons/year)	Minimum required number SO_2 stations
>1,000,000	200,000	3
	100,000–200,000	2
	0–100,000	1
200,000–1,000,000	>200,000	3
	100,000–200,000	2
	20,000–100,000	1
	>20,000	0
50,000–200,000	>100,000	2
	20,000–100,000	1
	<20,000	0

* * * * *

11. In appendix D, section 5, Table 5 is amended by revising the entry for ''Micro'' to read as follows:

* * * * *

5. * * *

TABLE 5.—SUMMARY OF SPATIAL SCALES FOR SLAMS AND REQUIRED SCALES FOR NAMS

Spatial scale	Scale applicable for SLAMS						Scales Required for NAMS					
	SO_2	CO	O_3	NO_2	Pb	PM–10	SO_2	CO	0_3	NO_2	Pb	PM–10
Micro	✔	✔			✔	✔	✔	✔			✔	✔
*	*	*		*		*		*			*	

* * * * *

12. In appendix E to part 58, § 3.1, the fourth sentence is revised to read as follows:

Appendix E—Probe Siting Criteria for Ambient Air Quality Monitoring

* * * * *

3. * * *

3.1 * * * Therefore, the probe or at least 80 percent of the monitoring path must be located 2 to 15 meters above ground level for all scales of measurements. * * *

* * * * *

13. In appendix F to part 58, by revising §§ 2.1, 2.1.1, and 2.1.2 to read as follows:

Appendix F—Annual SLAMS Air Quality Information

* * * * *

2.1 Sulfur Dioxide (SO_2).

2.1.1 *Site and Monitoring Information.* City name (when applicable), county name and street address of site location. AIRS site code. AIRS monitoring method code. Number of 5-minute hourly maximum observations. Number of hourly observations.

2.1.2 *Annual Summary Statistics.* Annual arithmetic mean (ppm). Highest and second highest 24-hour averages (ppm) (block averages measured midnight to midnight) and dates of occurrence. Highest and second highest 5-minute hourly maximums (ppm) (block averages) and dates and times (hour) of occurrence when 5-minute measurements are required. Highest and second highest 3-hour averages (ppm) (block averages beginning at midnight) and dates and times (ending hour) of occurrence. Number of exceedances of the 24-hour primary NAAQS. Number of exceedances of the 5-minute primary NAAQS (if a 5-minute primary NAAQS is promulgated) when 5-minute measurements are required. Number of exceedances of the 3-hour secondary NAAQS.

* * * * *

14. Appendix G is amended by revising tables 1 and 2 and Figure 3 to read as follows:

Appendix G—Uniform Air Quality Index and Daily Reporting

* * * * *

TABLE 1.—BREAKPOINTS FOR PSI IN METRIC UNITS [1]

PSI value (Ψ)	24-hr. PM µg/m³	24-hr. SO_2 µg/m³	8-hr. CO mg/m³	1-hr. 0_3 µg/m³	1-hr. NO_2 µg/m³
50	50	[3] 80	5	120	([2])
100	150	[3] 365	10	235	([2])
200	350	[3] 500	17	400	1,130
300	420	[3] 600	34	800	2,260
400	500	[3] 675	46	1,000	3,000
500	600	[3] 750	57.5	1,200	3,750

[1] At 25°C and 760 mm Hg.
[2] No index values reported at these concentration levels because there is no short-term NAAQS.
[3] All the concentration levels are used for illustrative purposes only. The actual levels will be determined at the time of the promulgation of the standard.

TABLE 2.—BREAKPOINTS FOR PSI

[Parts per million]

PSI value (Ψ)	24-hr. SO_2	8-hr. CO	1-hr. 0_3	1-hr. NO_2
50	[2] 0.03	4.5	.06	([1])
100	[2] 0.12	9	.12	([1])
200	[2] 0.19	15	0.2	0.6
300	[2] 0.23	30	0.4	1.2
400	[2] 0.26	40	0.5	1.6
500	[2] 0.29	50	0.6	2.0

[1] No index value reported at these concentration levels because there is no short-term NAAQS.
[2] All the concentration levels are used for illustrative purposes only. The actual levels will be determined at the time of the promulgation of the standard.

* * * * *

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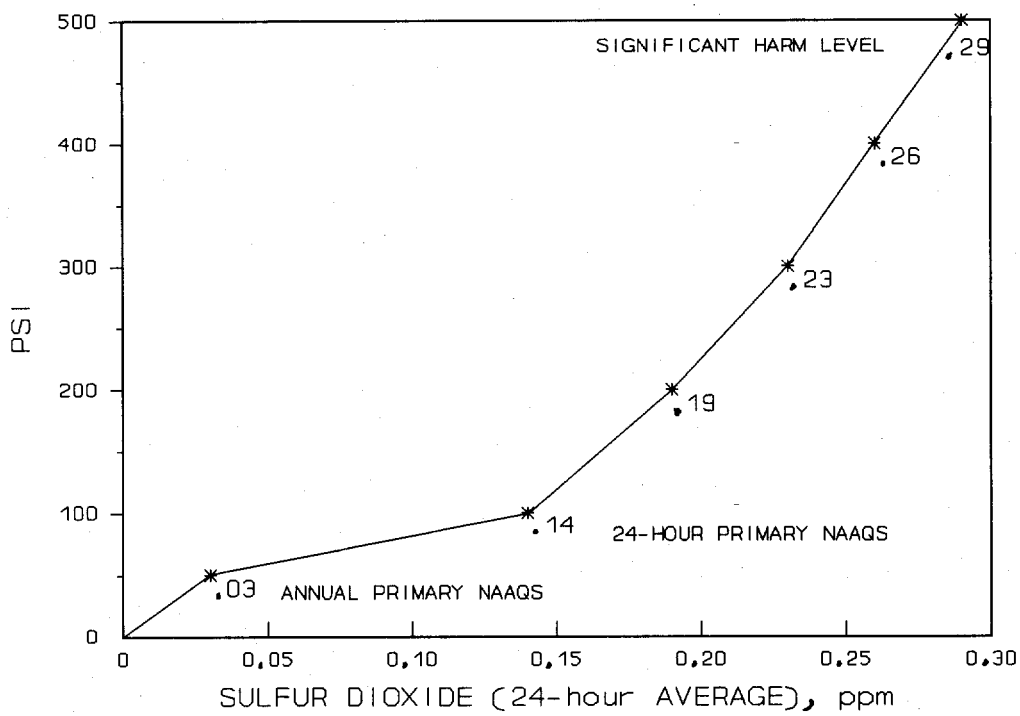

Figure 3. PSI function for sulfur dioxide.

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* * * * *

[FR Doc. 95–5021 Filed 3–6–95; 8:45 am]

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40 CFR Part 52

[TX–17–1–5600b; FRL–5163–4]

Approval and Promulgation of Implementation Plans; Texas State Implementation Plan Revision; Corrections for Reasonably Available Control Technology (RACT) Rules; Volatile Organic Compounds (VOC) RACT Catch-Ups

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA is approving revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas on June 8, 1992, and additional revisions which were submitted on November 13, 1992. These SIP revisions contain regulations which require the implementation of RACT for various types of VOC sources. These revisions respond to the requirements of section 182(b)(2) of the Federal Clean Air Act, as amended in 1990 (CAA), for States to adopt RACT rules by November 15, 1992, for major VOC sources which are not covered by an existing EPA Control Techniques Guideline (CTG) and for all sources covered by an existing CTG. These revisions also include corrections to the monitoring, recordkeeping, and reporting requirements for Victoria County, in order to make the VOC rules more enforceable in that County.

In the final rules section of this Federal Register, the EPA is approving these SIP revisions as a direct final rulemaking without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse or critical comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If the EPA receives adverse or critical comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by April 6, 1995.

ADDRESSES: Comments should be mailed to Guy R. Donaldson, Acting Chief, Air Planning Section (6T-AP), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State's petition and other information relevant to this action are available for inspection during normal hours at following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, P.O. Box 13087, Austin, Texas 78711–3087.

Anyone wishing to review this petition at the EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Mick Cote, Planning Section (6T–AP), EPA Region 6, telephone (214) 665–7219.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final

rule which is located in the Rules Section of this Federal Register.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 22, 1995.

Jane N. Saginaw,

Regional Administrator (6A).

[FR Doc. 95–5346 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA 95–2–6860b; FRL–5160–5]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from pump and compressor seals at petroleum refineries, chemical plants, bulk plants, and bulk terminals; large commercial bakeries; and polyester resin operations.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the final rules section of this Federal Register, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by April 6, 1995.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

Bay Area Air Quality Management, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION: This document concerns the Bay Area Air Quality Management District Rules 8–25, Pump and Compressor Seals at Petroleum Refineries, Chemical Plants, Bulk Plants, and Bulk Terminals; 8–42, Large Commercial Bakeries; and 8–50, Polyester Resin Operations; submitted to EPA on September 28, 1994 by the California Air Resources Board. For further information, please see the information provided in the Direct Final action which is located in the Rules section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 10, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–5349 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–W

40 CFR Parts 52 and 81

[TX–53–1–6843b; FRL–5164–1]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Texas; Approval of the Maintenance Plan for Victoria County and Redesignation of the Victoria County Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: On July 27, 1994 the State of Texas submitted a maintenance plan and a request to redesignate the Victoria County, Texas ozone nonattainment area from nonattainment to attainment. Under the Clean Air Act (CAA), nonattainment areas may be redesignated to attainment if sufficient data are available to warrant the redesignation and the area meets the other CAA redesignation requirements.

In the final rules section of this Federal Register, the EPA is approving this exemption request as a direct final rulemaking without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by April 6, 1995.

ADDRESSES: Comments should be mailed to Guy R. Donaldson, Acting Chief, Air Planning Section (6T–AP), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State's petition and other information relevant to this action are available for inspection during normal hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

Anyone wishing to review this petition at the EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Mick Cote, Planning Section (6T–AP), EPA Region 6, telephone (214) 665–7219.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the Rules Section of this Federal Register.

List of Subjects in 40 CFR Parts 52 and 81

Environmental protection, Air pollution control, Area designations, Hydrocarbons, Incorporation by reference, Intergovernmental

regulations, Lead, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 22, 1995.

Jane N. Saginaw,

Regional Administrator (6A).

[FR Doc. 95–5345 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 70

[AD–FRL–5166–4]

Clean Air Act Proposed Approval Of Operating Permits Program; State of Nebraska and the City of Omaha

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes full approval of the Operating Permit Programs submitted by the state of Nebraska and city of Omaha for the purpose of complying with Federal requirements which mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by April 6, 1995.

ADDRESSES Comments should be addressed to Christopher D. Hess at the address below. Copies of the submittal and other supporting information used in developing the proposed rule are available for inspection during normal business hours by contacting: Christopher D. Hess, Environmental Protection Agency, Air Branch; 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under Title V of the Clean Air Act (''the Act'') as amended (1990), EPA has promulgated rules which define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) Part 70. Title V requires states to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that states develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act which outlines criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993, date, or by the end of an interim program, it must establish and implement a Federal program.

II. Proposed Action and Implications

A. Analysis of Submission by State and Local Authority

Introduction. What follows are brief explanations indicating how the submittals meet the requirements of Part 70. The reader may consult the Technical Support Document (TSD) for a more detailed explanation of these topics.

1. Support Materials

(1) Governor's Letter. The state of Nebraska has requested approval of its Title V program. Additionally, the state designated its two local agencies to administer independent Title V programs and have requested approval on their behalf. Thus, this action also applies to the city of Omaha's Title V program. The Lincoln-Lancaster County Health Department (LLCHD) is addressed in a separate rulemaking action. The entire geography of Nebraska will be covered by either the state or an approved local program. The EPA will retain responsibility for the Title V program on tribal lands in Nebraska. These actions fulfill the requirements of part 70.4(b).

(2) Regulations. The basic regulatory framework for the operating permit program is Title 129 Nebraska Air Quality Regulations. The state's submittal includes a demonstration of the public review and hearing process involved with the adoption of Title 129. The city of Omaha has adopted these regulations by reference and provided adequate demonstration of the required legal authority and public review process. Both programs also use the Nebraska Environmental Protection Act and Title 115 Rules of Practice and Procedure.

The initial submittal contained an inadequate definition of ''applicable requirements'' that limited the ability to include all requirements in the operating permit. This is because the initial definition stated that ''applicable requirements'' were only those adopted by the state's Environmental Quality Council. However, in response to EPA comments, the state modified the regulations in December 1994, so that Nebraska can require that all ''applicable requirements'' of the Clean Air Act will be addressed in the permit process.

As a result, the submittal (as modified) does not identify any regulatory provisions which would restrict operation of the program.

(3) Attorney General's Legal Opinion. The opinion contains the elements required by 40 CFR 70.4(b)(3) and demonstrates that there is adequate authority to meet all Title V requirements. The city of Omaha's legal opinion incorporates the state's by reference and also provides adequate legal authority.

2. Implementation

(1) Program Description. A comprehensive plan for implementing the Title V program was included in each submittal that meets the requirements of 40 CFR 70.4(b)(1). Each plan identifies appropriate program authority, agency organization, and staffing. A combination of approximately 244 major sources have been identified that will require a Title V permit within both programs' jurisdictions.

These programs have also identified adequate procedures for the permit application and review process, including inspection and enforcement provisions. The EPA has determined the outlined processes are sufficient to ensure effective implementation of the program. An implementation agreement was not included in either submittal, but the EPA is encouraging its development in anticipation of program approval.

With respect to the operating permit fee, the city of Omaha has selected the presumptive minimum plus consumer price index (CPI), currently $30.07. The state has selected a fee above this amount at $30.69. These fees will be discussed further under the fee demonstration section (II., 3.). Both programs will maintain a Class II program for minor, non-Title V sources.

(2) Program Implementation. Each program is establishing a permit registry to ensure issuing one-third of all permits in the first year of the program. This registry also includes a provision to review permit applications within nine months of receipt for those sources

of hazardous air pollutants participating in the early reduction program under section 112(i)(5) of the Act.

In terms of initial permit applications, adequate procedures are outlined to satisfy Part 70 requirements. The application process includes affected state and EPA review. Each program's procedures and guidance are designed to ensure that a permit is issued within 18 months of application.

Both programs have established criteria for monitoring source compliance which include compliance inspections, citizen complaint responses, follow-up inspections, and permit application review. Each Title V source will be inspected at least once per year. Surveillance through monitoring will also be conducted to ensure compliance.

(3) Personnel. Each submittal includes a workload analysis estimating the number of personnel needed for the Title V program. Since both the state and the city of Omaha have selected a fee equal to or greater than the $25 plus CPI as outlined in Part 70, EPA is presuming that the requirements of § 70.9(b)(1) are met with respect to personnel. Either agency could be required to provide additional analysis if comments are received that propose to rebut the presumption of this Part 70 provision in accordance with § 70.9(5)(ii).

(4) Data Management. All permit application information will be entered into the state's computer data base and be submitted to the EPA. The proposed permits will be made available for EPA review. A permit decision schedule will ensure that a permit is issued within 18 months of initial application.

Each program requires the retention of permit information by the source for five years. Additionally, each agency has committed to maintain records for five years in its respective program descriptions.

(5) Applicability Provisions. These programs provide for permitting of all major sources, affected sources, sources that opt to apply for a permit, and all sources subject to sections 111 or 112 standards (new source performance standards and standards for hazardous air pollutants).

Both the state and the city of Omaha exempt sources that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act. This exemption is allowed by § 70.3(b)(1) until the Administrator completes a rulemaking to determine how the program should be structured for nonmajor sources.

Since the city of Omaha has incorporated the state's rules by reference, the above-mentioned items apply to that local Title V program as well.

(6) Permit Content. Nebraska's regulations require Title V permits to include Part 70 terms and conditions for all applicable requirements. These rules also stipulate that the duration of the permit will be specified in the permit. Both programs also provide for the inclusion of enhanced monitoring in permits.

Title 129 requires the permit to contain a condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Act as required by § 70.6(a)(4). The regulations also meet the requirements of § 70.6(a)(5), § 70.6(a)(6), § 70.6(a)(7), and § 70.6(a)(8). Part 70 also requires terms and conditions for reasonably anticipated operating scenarios to be included in the permit. Title 129 requires that the terms and conditions of each alternative scenario meet all the requirements of Part 70. Section 70.6(a)(10) requires the permit to contain terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases at the facility. Title 129 fulfills this requirement.

Part 70 also has requirements for the terms and conditions in a Part 70 permit at § 70.6(b), compliance requirements at § 70.6(c), and emergency provisions at § 70.6(g). Title 129 complies with these requirements.

Both programs provide for general permits. The director will identify criteria by which sources may qualify for the general permit as required by § 70.6(d)(1).

The permitting program can also have provisions for permitting temporary sources and for permit shields. Title 129 has both of these options and meets the requirements of Part 70. Title 129 also provides for operational flexibility and closely follows EPA's requirements.

The program does make provision to exempt the listing of insignificant activities in permit applications. The state has submitted a list to EPA that was adopted in December 1994. This list will be used by the city of Omaha as well.

(7) Permit Applications. Title 129 addresses permit application requirements in Chapters 5 and 7. Within these rules adequate procedures are outlined for the following: duty to apply, complete applications, confidential information, correcting a permit application, standard forms, and compliance certification. A detailed analysis of how the submittal meets these Part 70 requirements is included in the TSD.

(8) Permit Issuance. Title 129 satisfies both the complete and timely component of section 503 of the Act and 40 CFR 70.5(a). Sources are required to submit permit applications within 12 months after becoming subject to the permit program, or on or before some earlier date established under the state operating permit registry. Source permit applications must conform to the standard application forms developed by each of the respective agencies. These applications must contain information sufficient to determine all applicable requirements with respect to the applicant. Both submittals demonstrate that a source will receive a completeness determination within 30 days.

Both programs also require that final action be taken on complete applications within 18 months of submittal of a complete application, except for initial permit applications which are subject to the three-year transition plan set forth by the Clean Air Act Amendments of 1990. Title 129 requires compliance with public participation procedures, notification to affected states, compliance with all applicable requirements, and allows for a 45-day period for EPA objection.

The regulations provide for priority on applications for construction or modification under an EPA approved preconstruction review program. The operating permit regulations do not affect the requirement that any source have a preconstruction permit under an EPA-approved preconstruction review. The programs also provide that permits being renewed are subject to the same procedural requirements, including those for public participation and affected state and EPA review, that apply to initial permit issuance. Title 129 provides for administrative amendments which meet the requirements of the Federal rule.

Permit modification processing procedures are equivalent to Federal requirements as they provide for the same degree of permitting authority, EPA, and affected state review and public participation. The program satisfies all of the Federal minor permit modification procedures.

The programs provide for promptly sending to EPA any notice that either agency refuses to accept all recommendations of an affected state regarding a proposed minor permit modification. In addition, the programs provide that the permitting authority may approve, but may not issue, a final permit modification until after EPA's 45-day review period or until the EPA

has notified the permitting authority that the EPA will not object to issuance, whichever is first.

Title 129 provides for minor permit modification group processing which meets the Federal criteria. Specifically, any application for group processing must meet permit application requirements similar to those outlined in section 70.7(e)(3). The state's rules also provides for notifying the EPA and affected states of the requested permit modification within five working days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level.

Significant modification procedures are defined in a manner that parallels Federal provisions. Each agency's program description provides for completion of review of the majority of significant permit modifications within nine months after receipt of a complete application.

a. Permit reopenings. A permit is to be reopened and revised when additional applicable requirements become applicable to a major source with a remaining permit term of three or more years, and such a reopening is to be completed within 18 months after promulgation of the applicable requirement. In addition, the proceedings to reopen a permit will follow the same procedures that apply to initial issuance, will affect only those parts of the permit for which cause to reopen exists, and will ensure reopenings are made as expeditiously as practicable. The rule provides that at least 30 days' advance notice must be given to the permittee for reopenings, and that notice will be given of the intent to reopen the permit.

b. Off-permit revisions. Both the state and city of Omaha have elected to not allow off-permit activities.

(9) Compliance Tracking and Enforcement. The requirement for proposed compliance tracking and enforcement reporting has been met by both programs. Omaha will provide enforcement information to the state monthly. The state will then enter information for both agencies into the Aerometric Information Retrieval System. The proposed enforcement program will consist of source inspection, surveillance, response to complaints, permit application review, and enforcement responses. Proposed enforcement responses include permit modification, permit revocation, stipulation, administrative orders, injunctive relief, civil/criminal referral, and referral to the EPA.

(10) Public Participation, EPA and Affected States Review. Both programs ensure that all permit applications are available to the public. All requirements are included to ensure that each concerned citizen will be aware of proposed and final permit actions. This includes the commitment to keep a record of proceedings that will allow citizens to object to a permit up to 60 days after the EPA review period.

Title 129 contains rules that ensure mutual review by affected states and the EPA. Neither the state nor city of Omaha will issue a permit when it is objected to in accordance with § 70.8(c).

3. Fee Demonstration

The city of Omaha has elected to collect the presumptive minimum plus CPI in accordance with Part 70 to cover direct and indirect costs of developing and administering its program. The state has selected a fee in the amount of $30.69 which is above the presumptive.

Each program is also required to demonstrate that fees collected under Title V will be used exclusively for the purpose of Title V. This is addressed by the state in Nebraska statute 81.1505.01, which states that any Title V fees collected will be deposited into a designated account with the State Treasurer. Furthermore, in 81.105.04 the State Legislature's Appropriations Committee will conduct an annual review to ensure that all funds have been accounted for appropriately. Omaha has established a separate accounting structure exclusively for Title V.

Part 70 also requires permitting authorities to submit periodic accounting reports to EPA. Upon further guidance by EPA, both agencies will be requested to submit these reports.

Each submittal included an inventory of sources and the amount of fees that it expects to collect in the first year from each source as part of their fee demonstration. The state anticipates approximately $1,765,530 and the city of Omaha anticipates $419,957. Each agency submitted year-to-year estimates of resources by major activities which adequately satisfies the four-year projection.

4. Provisions Implementing the Requirements of Other Titles of the Act

(1) Acid rain. The legal requirements for an approval under the Title V operating permits program for a Title IV program were cited in guidance distributed on May 21, 1993, entitled ''Title V—Title IV Interface Guidance for States.'' Each program has met the five major criteria of this guidance which include legal authority, regulatory authority, forms, regulatory revisions, and a commitment to acid rain deadlines. 40 CFR part 72 is adopted by reference.

(2) Section 112. The specific Title V program approval criteria with respect to section 112 provisions are enumerated in a memorandum from John Seitz, Office of Air Quality Planning and Standards, dated April 13, 1993. The state and city of Omaha have met these criteria as described in the following topics:

a. Section 112(d), (f), and (h).—EPA Emissions Standards. Chapter 8 of Title 129 requires each permit to specify emission limitations and standards, including those operational requirements and limitations that ensure compliance with all requirements applicable at the time of permit issuance. If any applicable requirements have been promulgated at the Federal level, but not yet adopted by the state or Council, the director has specific regulatory authority to insert these applicable requirements into a permit on a case-by-case basis. Chapter 15 requires a permit to be reopened if a source becomes subject to an additional applicable requirement and has a remaining permit term of three years or more.

b. General Provisions. The Seitz memorandum notes that the implementation of all current National Emission Standards for Hazardous Air Pollutants standards and future Maximum Achievable Control Technology (MACT) standards includes the implementation of any ''general provisions'' that EPA develops for these standards. Initial Title V approval must ensure that states will carry out these provisions as in effect at the time of any permit issuance or revisions. The EPA promulgated the general provisions in 40 CFR part 63, Subpart A on March 19, 1994 (59 FR 12407). The state and city of Omaha intend to adopt all applicable requirements. EPA thus considers that both programs have met this requirement.

c. Section 112 (g)—Case-by-Case MACT For Modified/Constructed and Reconstructed Major Toxic Sources. Both programs propose to require best available control technology for new and modified sources of air toxics. In the absence of any EPA guidance/regulations defining case-by-case MACT procedures and methods for determining agency equivalency of Federal requirements at the time of agency program submittal, the respective submissions are adequate for the interim. Each agency intends to adopt Federal air toxic regulations expeditiously.

d. Section 112 (i)(5)—Early Reductions. Both programs have

adequate provisions for implementation of this program by adopting by reference 40 CFR part 63, Subpart D, early reduction compliance extension rules, promulgated in the Federal Register on December 29, 1992. To date, no source in either agency's area has made a commitment to participate in the early reductions program. Title 129 provides for incorporating alternative emission limits into permits.

e. Section 112(j)—Case-by-case MACT Hammer. Both agencies' intend to make case-by-case MACT determinations and to issue permits to subject sources in accordance with the 112(j) requirements. Title 129, Chapter 7 requires newly subject sources to file a permit application within 12 months of first becoming operational or otherwise subject to the title V program. This rule further requires sources subject to Chapter 28 (MACT) to submit a permit application within 12 months of becoming operational. The agencies would make their case-by-case MACT determination after receipt of the permit application and prior to permit issuance.

f. Section 112(l)—State Air Toxics Programs. The EPA intends to delegate authority for existing section 112 standards under the authority of section 112(l) concurrent with approval of the title V program. Both the state and city of Omaha have requested delegation of future 112 standards/rules in accordance with the adoption-by-reference procedures in 40 CFR Part 63, Subpart E, section 63.91. Since section 112(i) (the early reduction rule) has already been adopted by reference in Title 129, the EPA anticipates delegating this rule concurrent with title V approval.

g. Section 112(r)—Accidental Release Plans. Title 129 provides for the section 112(r) requirements in Chapter 8. The permit of a source subject to the requirements of section 112(r) will contain a requirement to register the plan, verification of plan preparation and submittal to the permitting agency, the state Emergency Response Commission, and any local emergency planning committee; and will require an annual certification in accordance with Chapter 7, that the risk management plan is being properly implemented.

The permit application requires a schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Requirements for a compliance schedule are listed in Chapter 8.

B. Options for Approval/Disapproval and Implications

The EPA is proposing full approval of the operating permits program submitted to EPA for the state of Nebraska and city of Omaha on November 15, 1993. Both of these agencies have demonstrated that their programs will be adequate to meet the minimum elements of an operating permits program as specified in 40 CFR part 70.

Prior to the EPA taking final action on these programs, the state is required to officially submit the December 2, 1994 amendments to title 129 and the city of Omaha must incorporate these amendments by reference and submit them to the EPA. As noted, the EPA has reviewed these rule amendments and considers them adequate for the title V program.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) approval requirements for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the state and local program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of each program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated, and to delegate existing standards under 40 CFR parts 61 and 63 for Part 70 sources. Both agencies have informed EPA that they intend to accept delegation of section 112 standards through the adoption by reference mechanism. This program for delegations applies to both existing and future standards for part 70 sources.

Additionally, both agencies have requested delegation of current and future section 112 standards under section 112(l)(5) and 40 CFR 63.91 for sources not subject to Part 70 requirements. Both have demonstrated broad legal authority which covers all section 112 sources, and both have demonstrated they have adequate resources to implement current section 112 standards. With respect to future section 112 requirements, both have committed to provide EPA with future demonstrations of resource adequacy as necessary when new requirements are promulgated and the resource burdens associated with those requirements become known. Both have demonstrated that they will expeditiously implement section 112 requirements for these sources pursuant to a schedule after EPA promulgation, and that they have sufficient enforcement authority to adequately enforce section 112 requirements for all sources.

Therefore, for sources not subject to part 70 requirements, EPA is proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 the state and Omaha's program for receiving delegation of future section 112 standards that are unchanged from federal standards as promulgated, and to delegate existing standards under 40 CFR parts 61 and 63 for non-Part 70 sources.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed rule. Copies of either submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

1. To allow interested parties a means to identify and locate documents for participating in the rulemaking process, and

2. To serve as the record in case of judicial review. The EPA will consider any comments received by April 6, 1995.

B. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this action from Executive Order 12866 review.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), Federal agencies must obtain the OMB clearance for collection of information from 10 or more non-Federal respondents.

D. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 13, 1995.

Dennis Grams,

Regional Administrator.

[FR Doc. 95–5517 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 261, 271 and 302

[SWH–FRL–5167–3]

RIN 2050–AD80

Extension of Comment Period for the Proposed Identification and Listing of Hazardous Waste/Dye and Pigment Industries

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) is extending the comment period for the proposed listing determination on a number of wastes generated during the production of dyes and pigments, which appeared in the Federal Register on December 22, 1994 (see 59 FR 66072–114). The public comment period for this proposed rule was to end on March 22, 1995. The purpose of this notice is to extend the comment period an additional 120 days beyond that, to end on July 19, 1995. This extension of the comment period is provided to allow commenters an opportunity to comment further on the proposal.

DATES: EPA will accept public comments on this proposed listing determination until July 19, 1995. Comments postmarked listing determination until July 19, 1995. Comments postmarked after the close of the comment period will be stamped ''late.''

ADDRESSES: The public must send an original and two copies of their comments to EPA RCRA Docket Number F–94–DPLP–FFFFF, Room 2616, U.S. EPA, 401 M Street SW., Washington, DC. The docket is open from 9 am to 4 pm, Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this notice, please contact Wanda Levine, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–7458.

SUPPLEMENTARY INFORMATION: This proposed rule was issued under Section 3001(b) of RCRA. EPA proposed to list certain wastes generated during the production of dyes and pigments because these wastes may pose a substantial present or potential risk to human health or the environment when improperly managed. See 59 FR 66072–114 (December 22, 1994) for a more detailed explanation of the proposed rule.

These proposed hazardous waste listings were based in part upon data claimed as confidential by certain dye and pigment manufacturers. Although EPA intends to publish these data or information derived from these data claimed as confidential (to the extent relevant to the proposed listing), the Agency is unable to do so at the present time. EPA is pursuing avenues to allow publication of the information, and intends to supplement the public record prior to issuance of a final listing. EPA is extending the comment period to provide sufficient time for the public to comment if and when additional data are published.

Dated: February 27, 1995.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 95–5525 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Parts 261, 271, and 302

[SWH–FRL–5167–2]

RIN 2050–AD80

Postponement of Public Hearing on the Proposed Identification and Listing of Hazardous Waste/Dye and Pigment Industries

AGENCY: Environmental Protection Agency.

ACTION: Notice of postponement of public hearing.

SUMMARY: On December 22, 1994 (see 59 *FR* 66072–114), the U.S. Environmental Protection Agency (EPA or Agency) proposed to list as hazardous five wastes generated during the production of dyes and pigments, proposed not to list six other wastes from these industries, and proposed to defer action on three wastes due to insufficient information. At the request of the parties originally seeking a public hearing concerning this proposal, the Agency is announcing the postponement of the public hearing, previously scheduled to be held on March 15, 1995, in Washington, DC.

DATES: The public hearing has not been rescheduled.

ADDRESSES: The RCRA regulatory docket that contains the record for this proposed listing determination on wastes from the production of dyes and pigments is located at Room 2616, U.S. EPA, 401 M Street SW., Washington, DC. the docket is open from 9 am to 4 pm, Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this notice, please contact Wanda Levine, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–7458.

SUPPLEMENTARY INFORMATION: Since publication of this proposed rule, the Agency had received requests for a public hearing from the trade association representing the pigments industry, the Color Pigments Manufacturers Association (CPMA); and the trade association representing the dyes industry, the Ecological and Toxicological Association of Dyes and Organic Pigments Manufacturers (ETAD). After the announcement of the public hearing in the Wednesday, February 8, 1995 Federal Register (see 60 *FR* 7513–4), both associations requested that it be postponed pending resolution of several outstanding issues. In response to these requests, EPA has decided to postpone the public hearing. EPA may reschedule the public hearing in the future, and will provide further notice at that time.

Dated: March 1, 1995.

Michael H. Shapiro, Director,

Office of Solid Waste.

[FR Doc. 95–5515 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 65a

RIN 0905–AD46

National Institute of Environmental Health Sciences Hazardous Substances Basic Research and Training Grants

AGENCY: National Institutes of Health, Public Health Service, Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Institutes of Health (NIH) proposes to issue new regulations to govern grants for research

and training awarded by the National Institute of Environmental Health Sciences (NIEHS) for the purpose of understanding, assessing, and attenuating the adverse effect on human health of exposure to hazardous substances. The grants are authorized by section 311(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as added by section 209 of the Superfund Amendments and Reauthorization Act of 1986.

DATES: Comments must be received on or before May 8, 1995. The final rule would become effective on April 6, 1995.

ADDRESSES: Comments should be sent to Mr. Jerry Moore, NIH Regulatory Affairs Officer, National Institutes of Health, Building 31, Room 3B11, 9000 Rockville Pike, Bethesda, Maryland 20892.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Moore at the address above, or telephone (301) 496–4606 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 311(a) of CERCLA, enacted on October 17, 1986, authorizes the Secretary of the Department of Health and Human Services, acting through the Director of the National Institute of Environmental Health Sciences (NIEHS) and, in consultation with the Administrator of the Environmental Protection Agency, to administer a program of grants for basic research and training directed towards understanding, assessing, and attenuating the adverse effects on human health resulting from exposure to hazardous substances. Grants made under this program are for coordinated, multi-component, interdisciplinary projects linking biomedical research with related engineering, hydrologic, and ecologic research, and concomitant training. NIH published a full description of the program in the Federal Register on November 21, 1986 (51 FR 43089), and invited the public to attend an open meeting on the program which was held on December 19, 1986. Subsequently, NIH announced its intention to issue regulations to implement this program in the Unified Agenda of Federal Regulations published in the Federal Register on October 21, 1991 (56 FR 53327).

Further, PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

The purpose of this notice is to invite public comment on the proposed regulations.

The following statements are provided as information for the public.

Regulatory Impact Statement

Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, requires the Department to prepare an analysis for any rule that meets one of the E. O. 12866 criteria for a significant regulatory action; that is, that may—

Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal, governments or communities;

Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

In addition, the Department prepares a regulatory flexibility analysis, in accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6), if the rule is expected to have a significant impact on a substantial number of small entities.

For the reasons outlined below, we do not believe this proposed rule is economically significant nor do we believe that it will have a significant impact on a substantial number of small entities. In addition, this proposed rule is not inconsistent with the actions of any other agency.

This proposed rule merely codifies internal policies and procedures of the Federal government currently used by NIH to administer the NIEHS Hazardous Substances Basic Research and Training Grants Program. The grants do not have a significant economic or policy impact on a broad cross-section of the public. Furthermore, this proposed rule would only affect those qualified public and private non-profit institutions of higher education; generators of hazardous waste; persons involved in the detection, assessment, evaluation, and treatment of hazardous substances; owners and operators of facilities at which hazardous substances are located; and State and local governments interested in participating in the program. No individual or institution is obligated to participate in the grant program.

For these same reasons, the Secretary certifies this proposed rule will not have a significant economic impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis, as defined under the Regulatory Flexibility Act of 1980, is not required.

Paperwork Reduction Act

The proposed rule does not contain information collection requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) numbered program affected by this proposed rule is: 93.143.

List of Subjects in 42 CFR Part 65a

Grant programs—health, Health, Medical research, Hazardous substances.

Dated: October 28, 1994.

Philip R. Lee,

Assistant Secretary for Health.

Approved: February 28, 1995.

Donna E. Shalala,

Secretary.

For reasons set forth in the preamble, we propose amending title 42 of the Code of Federal Regulations by adding a new part 65a as follows.

PART 65a—NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES HAZARDOUS SUBSTANCES BASIC RESEARCH AND TRAINING GRANTS

Sec.
65a.1 To what programs do these regulations apply?
65a.2 Definitions.
65a.3 Who is eligible to apply for a grant?
65a.4 What are the program requirements?
65a.5 How to apply.
65a.6 How will applications be evaluated?
65a.7 Awards.
65a.8 How long does grant support last?
65a.9 What are the terms and conditions of awards?
65a.10 For what purposes may grant funds be spent?
65a.11 Other HHS policies and regulations that apply.

Authority: 42 U.S.C. 216, 9660(a).

§ 65a.1 To what programs do these regulations apply?

(a) The regulations of this part apply to the award of grants to support programs for basic research and training directed towards understanding, assessing, and attenuating the adverse effects on human health resulting from exposure to hazardous substances, as authorized under section 311(a) of the

Act (42 U.S.C. 9660(a)). The purpose of these programs is to carry out coordinated, multicomponent, interdisciplinary research consisting of at least three or more biomedical research projects relating to hazardous substances and at least one non-biomedical research project in the fields of ecology, hydrogeology, and/or engineering, and including the training of investigators as part of the grantee's overall program.

(b) These regulations also apply to cooperative agreements awarded to support the programs specified in paragraph (a) of this section. References to ''grant(s)'' shall include ''cooperative agreement(s).''

(c) The regulations of this part do not apply to:

(1) Research training support under the National Research Services Awards Program (see part 66 of this chapter),

(2) Research training support under the NIH Center Grant programs (see part 52a of this chapter),

(3) Research training support under traineeship programs (see parts 63 and 64a of this chapter), or

(4) Research training support under the NIH AIDS Research Loan Repayment Program authorized under section 487A of the Public Health Service Act, as amended (42 U.S.C. 288–1).

§ 65a.2 Definitions.

As used in this part:

Act means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 et seq.).

Award or *grant* means a grant awarded under section 311(a) of the Act (42 U.S.C. 9660(a)).

Director means the Director of the National Institute of Environmental Health Sciences, or the Director's delegate.

HHS means the Department of Health and Human Services.

Institution of higher education means an educational institution in any State which:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate,

(2) Is legally authorized within such State to provide a program of education beyond secondary education,

(3) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree,

(4) Is a public or other nonprofit institution, and

(5) Is accredited by a nationally recognized accrediting agency or association or, if not so accredited,

(i) Is an institution with respect to which the Secretary of Education has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time, or

(ii) Is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited.

(6) The term also includes any school which provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions of paragraphs (1), (2), (4), and (5) of this definition.

(7) The term also includes a public or nonprofit private educational institution in any State which, in lieu of the requirement in paragraph (1) of this definition, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who meet the requirements of section 1091(d) of Title 20 U.S. Code.

(8) For purposes of this definition, the Secretary of Education shall publish a list of nationally recognized accrediting agencies or associations which that official determines to be reliable authority as to the quality of training offered.

NIEHS means the National Institute of Environmental Health Sciences, an organizational component of the National Institutes of Health, as authorized under sections 401(b) and 463 of the Public Health Service Act, as amended (42 U.S.C. 281(b)(1)(L) and 285*l*).

NIH means the National Institutes of Health.

Nonprofit, as applied to any agency, organization, institution, or other entity, means a corporation or association no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

PHS means the Public Health Service.

Program means the activity to carry out research and training supported by a grant under this part.

Program director means the single individual designated by the grantee in the grant application and approved by the Director, who is responsible for the scientific and technical direction of the research component and the conduct of the training component under a program.

Project period means the period of time, from one to five years, specified in the notice of grant award that NIEHS intends to support a proposed program without requiring the program awardee to recompete for funds.

§ 65a.3 Who is eligible to apply for a grant?

(a) Public and private nonprofit institutions of higher education may apply for awards under this part.

(b) Awardee institutions may carry out portions of the research or training components of an award through contracts with appropriate organizations, including:

(1) Generators of hazardous wastes;

(2) Persons involved in the detection, assessment, evaluation, and treatment of hazardous substances;

(3) Owners and operators of facilities at which hazardous substances are located; and

(4) State and local governments.

§ 65a.4 What are the program requirements?

The applicant shall include the following in its proposed program for which support is requested under this part.

(a) *Basic research component.* The program shall include three or more meritorious biomedical research projects, including epidemiologic studies relating to the study of the adverse effects of hazardous substances on human health, and at least one meritorious project involving hydrogeologic or ecologic research which shall cumulatively address:

(1) Methods and technologies to detect hazardous substances in the environment,

(2) Advanced techniques for the detection, assessment, and evaluation of the effects of these substances on human health,

(3) Methods to assess the risks to human health presented by these substances, and

(4) Basic biological, chemical, and/or physical methods to reduce the amount and toxicity of these substances.

(b) *Training component.* The program shall include training, as part of or in conjunction with the basic research component:

(1) Graduate training in environmental and occupational health and safety and in public health and engineering aspects of hazardous waste control, and/or

(2) Graduate training in the geosciences, including hydrogeology, geological engineering, geophysics, geochemistry, and related fields, necessary to meet professional personnel needs in the public and private sectors and to carry out the purposes of the Act, and

(3) Worker training relating to handling hazardous substances, which includes short courses and continuing education for State and local health and environment agency personnel and other personnel engaged in the handling of hazardous substances, in the management of facilities at which hazardous substances are located, and in the evaluation of the hazards to human health presented by these facilities.

§ 65a.5 How to apply.

Each institution desiring a grant under this part shall submit an application at such time and in such form and manner as the Secretary may prescribe.

§ 65a.6 How will applications be evaluated?

The Director shall evaluate applications through the officers and employees, and experts and consultants engaged by the Director for that purpose, including review by the National Advisory Environmental Health Sciences Council in accordance with peer review requirements set forth in part 52h of this chapter. The Director's first level of evaluation will be for technical merit and shall take into account, among other pertinent factors, the significance of the program, the qualifications and competency of the program director and proposed staff, the adequacy of the applicant's resources available for the program, and the amount of grant funds necessary for completion of its objectives. A second level of review will be conducted by the National Advisory Environmental Health Sciences Council.

§ 65a.7 Awards.

Criteria. Within the limits of available funds, the Director may award grants to carry out those programs which:

(a) Are determined by the Director to be meritorious; and

(b) In the judgment of the Director, best promote the purposes of the grant program, as authorized under section 311(a) of the Act and the regulations of this part, and best address program priorities.

§ 65a.8 How long does grant support last?

(a) The notice of grant award specifies how long NIEHS intends to support the project without requiring the project to recompete for funds. This period, called the project period, may be for 1–5 years.

(b) Generally, the grant will initially be for one year and subsequent continuation awards will also be for one year at a time. A grantee must submit a separate application at such time and in such form and manner as the Secretary may prescribe to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of these awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require determination by the Director that continued funding is in the best interest of the Federal Government.

(c) Neither the approval of any application nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation or other award with respect to any approved application or portion of an approved application.

(d) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward to the next budget period, for use as prescribed by the Director, provided a continuation award is made. If at any time during a budget period it becomes apparent to the Director that the amount of Federal funds awarded and available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for that period, the Director may adjust the amounts awarded by withdrawing the excess.

§ 65a.9 What are the terms and conditions of awards?

In addition to being subject to other applicable regulations (see § 65a.11 of this part), grants awarded under this part are subject to the following terms and conditions:

(a) *Material changes.* The grantee may not materially change the quality, nature, scope, or duration of the program unless the approval of the Director is obtained prior to the change.

(b) *Additional conditions.* The Director may impose additional conditions prior to the award of any grant under this part if it is determined by the Director that the conditions are necessary to carry out the purpose of the grant or assure or protect advancement of the approved program, the interests of the public health, or the conservation of grant funds.

§ 65a.10 For what purposes may grant funds be spent?

A grantee shall expend funds it receives under this part solely in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, and the applicable cost principles in 45 CFR 74.27.

§ 65a.11 Other HHS policies and regulations that apply.

Several other HHS policies and regulations apply to awards under this part. These include but are not necessarily limited to:

42 CFR part 50, subpart A—Responsibility of PHS awardee and applicant institutions for dealing with and reporting possible misconduct in science

42 CFR part 50, subpart D—Public Health Service grant appeals procedure

42 CFR part 52h—Scientific Peer Review of Research Grant Applications and Research and Development Contract Projects

45 CFR part 16—Procedures of the Departmental Grant Appeals Board

45 CFR part 46—Protection of human subjects

45 CFR part 74—Administration of grants

45 CFR part 75—Informal grant appeals procedures

45 CFR part 76—Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants)

45 CFR part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of title VI of the Civil Rights Act of 1964

45 CFR part 81—Practice and procedure for hearings under part 80 of this title

45 CFR part 84—Nondiscrimination on the basis of handicap in programs and activities receiving Federal financial assistance

45 CFR part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance

45 CFR part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

45 CFR part 92—Uniform administrative requirements for grants and cooperative agreements to State and local governments

45 CFR part 93—New restrictions on lobbying 51 FR 16958 (May 7, 1986)—NIH Guidelines for Research Involving Recombinant DNA Molecules

''Public Health Service Policy on Humane Care and Use of Laboratory Animals,'' Office for Protection from Research Risks, NIH (Revised September 1986) 59 FR 14508 (as republished March 28, 1994)—NIH Guidelines on the Inclusion of Women and Minorities as Subjects in Clinical Research

[FR Doc. 95–5433 Filed 3–6–95; 8:45 am]

BILLING CODE 4140–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 95–20; FCC 95–48]

Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On October 18, 1994, the United States Court of Appeals for the Ninth Circuit remanded in part the Commission's *BOC Safeguards Order* in the *Computer III* proceedings, which had established procedures for the Bell Operating Companies (BOCs) to offer enhanced services on a structurally integrated basis. This Notice of Proposed Rulemaking responds to the court decision. The Notice reviews the nonstructural safeguards that have been implemented under the *Computer III* framework, and asks parties to comment on the specific issue remanded by the court, as well as on the broader question of whether structural separation should be reimposed for some or all BOC enhanced services.

DATES: Comments must be filed on or before April 7, 1995, and reply comments must be filed on or before April 28, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rose Crellin at (202) 418–1571 or Kevin Werbach at (202) 418–1597, Policy and Program Planning Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, FCC 95–48, adopted February 7, 1995 and released February 21, 1995. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

1. In the *Computer III* proceeding, beginning with the *Phase I Order* (51 FR 24350 (July 3, 1986)), the Commission concluded that the Bell Operating Companies (BOCs) should be permitted to offer enhanced services without establishing structurally separate subsidiaries. Enhanced services use the existing telephone network to deliver services—such as voice mail, E-Mail, and gateways to on-line databases—beyond a basic transmission offering. Under structural separation requirements, the BOCs had to form subsidiary companies, with separate personnel, facilities, and equipment, to offer these services. The need for safeguards on BOC provision of enhanced services arises from the fact that competing enhanced service providers generally must depend on the BOC networks to transport their services to customers. The Commission has identified two primary forms of anticompetitive conduct that may arise from BOC involvement in the enhanced services marketplace: (1) Improper cross-subsidization, in which the BOCs undercut competing enhanced service providers (ESPs) by shifting costs from their enhanced services to their regulated basic services; and (2) access discrimination, in which BOCs provide competing ESPs with inferior interconnection and access to network services that these companies need for their enhanced services.

2. In *Computer III*, the Commission determined that the benefits of lifting structural separation requirements—in terms of increased availability of enhanced services—outweighed the risks of anticompetitive conduct by the BOCs, and that a regime of nonstructural safeguards could provide adequate protection against cross-subsidization and access discrimination. The Commission established a two-step process in *Computer III* for lifting structural separation restrictions. Initially, BOCs were permitted to offer individual enhanced services on a structurally integrated basis once they had received FCC approval of service-specific Comparably Efficient Interconnection (CEI) plans. Those plans were required to detail how the BOCs would make the underlying network services used by their own enhanced service offerings available to competing ESPs on an equal access basis. In the second stage of *Computer III*, BOCs were required to develop Open Network Architecture (ONA) plans detailing how they would unbundle and make available basic network services, and describing how they would comply with other nonstructural safeguards. Upon FCC approval of the initial BOC ONA plans, the remaining structural separation requirements were to be lifted. Following a remand from the Court of Appeals for the Ninth Circuit, the Commission strengthened and reaffirmed its regime of nonstructural safeguards in the 1991 *BOC Safeguards Order* (57 FR 4373 (February 5, 1992)). Between 1992 and 1993, the Common Carrier Bureau granted full structural relief to the BOCs upon a showing that they had complied with the requirements of the *BOC Safeguards Order*, and those decisions were subsequently ratified by the Commission.

3. In October, 1994, the United States Court of Appeals for the Ninth Circuit partially remanded the *BOC Safeguards Order*. The court concluded that the Commission had scaled back its conception of ONA from the original vision in *Computer III*, and had not explained how the more limited version of ONA represented in the approved BOC ONA plans provided sufficient protection against BOC access discrimination. On this basis, the court held that the FCC's cost benefit analysis for fully lifting structural separation restrictions was flawed. On January 11, 1995, the Common Carrier Bureau clarified the requirements for BOC provision of enhanced services after the Ninth Circuit decision, and granted the BOCs interim waivers to offer new services, subject to certain restrictions and filing requirements, during the pendancy of remand proceedings.

4. In this Notice of Proposed Rulemaking, the Commission has initiated a proceeding to reexamine its *Computer III* rules in light of the most recent Ninth Circuit remand. The Commission noted that the partial vacation of the *BOC Safeguards Order* generally reinstates the *Computer III* service-by-service CEI plan regime, subject to the modification spelled out in the Common Carrier Bureau's waiver order. The Commission concluded that the Ninth Circuit had remanded the specific issue of whether the existing nonstructural safeguards including the level of network unbundling under ONA, are sufficient to justify fully lifting structural separation requirements.

5. The Notice of Proposed Rulemaking reviewed the various nonstructural

safeguards the Commission has put into place to protect against anticompetitive practices by the BOCs. The Commission described how the ONA model had evolved, and the forms of network unbundling it encompasses today and is likely to cover in the future. The Notice of Proposed Rulemaking also outlined the other safeguards that are designed to work in concert with ONA to protect against anticompetitive practices by the BOCs. Parties were asked to comment on the specific issue identified by the court: Whether these nonstructural safeguards are sufficient for the BOCs to be granted full structural relief.

6. The Commission also asked parties to comment on broader issues regarding the relative merits of structural and nonstructural safeguards. The Commission noted that, although there is evidence to suggest that nonstructural safeguards have been effective, various parties have argued that structural separation should be reimposed on the BOCs. In order to provide it with information to make an informed decision, the Commission asked commenters to provide specific evidence as to the relative costs and benefits of structural separation and nonstructural safeguards.

7. The Notice of Proposed Rulemaking also sought comment on the protection against discrimination necessary to allow ESPs and BOCs to compete effectively without creating unnecessary burdens, whether certain types of enhanced services may require greater protection than others, and whether structural separation or additional nonstructural safeguards are needed for specific enhanced services. Parties were asked to identify any specific unbundled network services that BOCs do not currently provide which meet the criteria established in *Computer III* for service unbundling. To the extent that parties propose a reimposition of structural separation, the Commission asked that they identify the benefits that they believe will accrue for the provision of enhanced services to consumers from such action, and articulate why these benefits cannot be achieved under a regime of nonstructural safeguards.

8. Finally, the Commission recognized that a return to some form of structural separation requirements at this time would impose certain transition costs on the BOCs, and could result in service disruption and customer confusion. The Commission therefore asked parties to identify transitional expenses that would be borne by customers of BOC enhanced services, and to indicate whether a return to structural separation requirements would result in disruptions of service or confusion among customers. To the extent that parties believe structural separation is appropriate, the Commission asked them to describe particular scenarios and timetables under which BOCs would be required to move from the existing partially integrated CEI plan regime, and to identify the specific costs and benefits of those scenarios.

Ordering Clauses

1. Accordingly, *it is ordered* That, pursuant to the authority contained in sections 1, 4, and 201–205 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, and 201–205, a Notice of Proposed Rulemaking is hereby adopted.

List of Subjects in 47 CFR Part 64

Communciations common carriers, Computer technology.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–5491 Filed 3–6–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 95–29, RM–8596]

Radio Broadcasting Services; Iron Mountain, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Superior Media Group, Inc., proposing the allotment of Channel 294A to Iron Mountain, Michigan, as that community's third local FM service. The channel can be allotted to Iron Mountain without a site restriction at coordinates 45–49–12 and 88–04–06. Canadian concurrence will be requested for this allotment.

DATES: Comments must be filed on or before April 24, 1995, and reply comments on or before May 9, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Matthew H. McCormick, Reddy, Begley, Martin & McCormick, 1001 22nd Street, NW, Suite 350, Washington, D. C. 20037.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–29, adopted February 21, 1995, and released March 2, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW, Suite 140, Washington, D.C. 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–5492 Filed 3–6–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF DEFENSE

48 CFR Parts 45, 52

Federal Acquisition Regulation; Government Property

AGENCY: Department of Defense.

ACTION: Notice of cancellation and rescheduling of public meeting.

SUMMARY: The public meetings originally scheduled for March 9, and 10, 1995, as part of the continuing initiative to rewrite the Federal Acquisition Regulation (FAR) Part 45, Government Property, have been canceled and rescheduled for April 6, 1995, and April 7, 1995.

DATES: Public Meetings: The public meetings will be conducted at the address shown below from 12:30 p.m. to 5:00 p.m., local time, on April 6, 1995; and from 9:30 a.m. to 5:00 p.m., local time, on April 7, 1995.

Statements: Statements from interested parties for presentation at the

public meeting should be submitted to the address below on or before April 3, 1995.

ADDRESSES:

Draft Materials: Intersted parties may obtain drafts of the materials to be discussed at the April 6 and 7 public meetings from Ms. Angelena Moy, PDUSD(A&T)DP/MPI, 1211 S. Fern Street, Room C–109, Arlington, VA 22202–2808.

Public Meeting: The location of the public meeting is 1211 S. Fern Street, Room C–102, Arlington, VA 22202–2808. Individuals wishing to attend the meeting, including individuals wishing to make presentations on the topics scheduled for discussion, should contact Ms. Angelena Moy, PDUSD(A&T)DP/MPI, 1211 S. Fern Street, Room C–109, Arlington, VA 22202–2808.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, telephone (703) 604–5385. FAX (703) 604–6709.

SUPPLEMENTARY INFORMATION:

Background

On September 16, 1994, (59 FR 47583) the Director of Defense Procurement, Department of Defense, announced an initiative to rewrite the Federal Acquisition Regulation (FAR) Part 45, Government Property, to make it easier to understand and to minimize the burdens imposed on contractors and contracting officers. The Director of Defense Procurement is providing a forum for an exchange of ideas and information with government and industry personnel by holding public meetings, soliciting public comments, and publishing notices of the public meetings in the Federal Register.

The public meetings scheduled for March 9 and 10, 1995, have been canceled and rescheduled for April 6 and 7, 1995.

As indicated in the February 9, 1995, Federal Register notice (60 FR 7744), interested parties are invited to present statements on (1) draft legislation permitting negotiated sales of low value Government property to holding contractors, (2) revisions to FAR 52.245–17, Special Tooling, (3) disposal of Government property, and (4) establishing the value of Government property for the purpose of determining appropriate rental charges.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations Directorate.

[FR Doc. 95–5605 Filed 3–3–95; 11:32 am]

BILLING CODE 5000–04–M

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Reopening of Public Comment Period on Proposed Endangered or Threatened Status for Four Southwestern California Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of public comment period.

SUMMARY: The Fish and Wildlife Service (Service) provides notice that a public hearing will be held and the comment period reopened on proposed endangered status for *Atriplex coronata* var. *notatior* (San Jacinto Valley crownscale) and *Allium munzii* (Munz's onion), and proposed threatened status for *Brodiaea filifolia* (thread-leaved brodiaea) and *Navarretia fossalis* (spreading navarretia). The Service also proposes critical habitat for *Atriplex coronata* var. *notatior.* All parties are invited to comment on this proposal.

DATES: The public hearing will be held from 2:00 to 4:00 p.m. and from 6:00 to 8:00 p.m. on Thursday, March 23, 1995, in Riverside, California. The public comment period now closes on May 20, 1995. Any comments received by the closing date will be considered in the final decision on this proposal.

ADDRESSES: The hearing will be held at the Holiday Inn, Empire Ballroom, 3400 Market Street, Riverside, California. Written comments and materials may be submitted at the hearing or may be sent directly to the Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Field Supervisor (see **ADDRESSES** section) at (619) 431–9440.

SUPPLEMENTARY INFORMATION:

Background

Allium munzii (Munz's onion), a member of the lily family, is a white-flowered, single-leaved, scapose perennial originating from a bulb. *A. munzii* is restricted to mesic clay soils in western Riverside County, California. It is frequently associated with southern needlegrass grassland, mixed grassland, and open coastal sage scrub, or occasionally in cismontane juniper woodlands. Twelve populations are currently known.

Atriplex coronata var. *notatior* (San Jacinto Valley crownscale or saltbush) is a low, grey-green, erect annual member of the goosefoot family. It is restricted to the Traver-Domino-Willows alkaline soils series of the San Jacinto, Perris, and Menifee Valleys of western Riverside County, California, in association with alkali sink, alkali playa, vernal pools, and alkali grassland habitats. This taxon occurs at 10 population centers. The number of individuals in any given year vary widely, depending on available rainfall, and the duration and extent of flooding.

Brodiaea filifolia (thread-leaved brodiaea), a member of the lily family, is a lavender-flowered scapose perennial herb. It typically occurs on gentle slopes, and in valleys and flood plains associated with mesic, southern needlegrass grassland and alkali grassland plant communities growing on clay, loamy sand, or alkaline silty-clay soils. The species is distributed in widely disjunct populations from the foothills of the San Gabriel Mountains in Los Angeles County, California, east to the foothills of the San Bernardino Mountains in San Bernardino County, south through western Riverside and eastern Orange Counties to central coastal San Diego County. About 18 out of 27 historical populations are known to exist throughout its range. The majority of the populations are centered on the Santa Rosa Plateau, Riverside County, California, and in the vicinity of Carlsbad, Vista, and San Marcos, San Diego County, California.

Navarretia fossalis (spreading navarretia) is a low, white-flowered annual of the phlox family that is found primarily in association with vernal pools, alkali grassland, and vernal alkali flood plains. *N. fossalis* is known from a single occurrence in Los Angeles County, California, the lowlands of western Riverside County, California, and coastal San Diego County south into northwestern Baja California, Mexico. Fewer than 30 populations of this species are known in the United States. These populations are concentrated in three locations: Otay Mesa in southern San Diego County, near Hemet and along the San Jacinto River in Riverside County.

These species are threatened by one or more of the following factors: Habitat destruction and fragmentation from agricultural and urban development, pipeline construction, alterations of wetland hydrology by draining or channelization, clay mining, off-road vehicle activity, cattle and sheep

grazing, weed abatement, fire suppression practices, competition from alien plant species, and the inadequacy of existing regulatory mechanisms.

On December 15, 1994, the Service published a proposed rule on endangered status for *Atriplex coronata* var. *notatior* and *Allium munzii*, proposed threatened status for *Brodiaea filifolia* and *Navarretia fossalis*, and critical habitat for *Atriplex coronata* var. *notatior* (59 FR 64812). Section 4(b)(5)(E) of the Endangered Species Act requires that a public hearing be held if it is requested within 45 days of the publication of the proposed rule. Public hearing requests were received from several requestors. As a result, the Service has scheduled a public hearing on Thursday, March 23, 1995, at the Holiday Inn, Empire Ballroom, 3400 Market Street, Riverside, California.

Anyone wishing to make statements for the record should bring a written copy of their statements to the hearing. Oral statements may be limited in length if the number of parties present at the hearing necessitates such a limitation. Oral and written comments receive equal consideration. The Service places no limits on the length of written comments or materials presented at the hearing or mailed to the Service.

The comment period on the proposal was to close on February 13, 1995. To accommodate the hearing, the public comment period is reopened upon publication of this notice. Written comments may now be submitted until May 20, 1995, to the Service in the **ADDRESSES** section.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended: (16 U.S.C. 1531 *et seq.*)

Dated: February 28, 1995.

Thomas J. Dwyer,

Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 95–5484 Filed 3–6–95; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 60, No. 44
Tuesday, March 7, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking, Committee on Adjudication, Committee on Administration, and Committee on Governmental Processes

ACTION: Notice of Public Meetings; Notice of Cancellation of Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of meetings of the Committees on Rulemaking, Adjudication, and Administration of the Administrative Conference of the United States. In addition, notice is hereby given of cancellation of a meeting of the Committee on Governmental Processes.

AGENCY: Committee on Rulemaking.

DATES: Wednesday, March 29, 1995, at 9:30 a.m.

LOCATION: Office of the Chairman, Administrative Conference, 2120 L Street NW., Suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nancy G. Miller, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

AGENCY: Committee on Adjudication.

DATES: Friday, March 17, 1995 at 9:30 a.m.; Monday, April 3, 1995 at 9:30 a.m.

LOCATION: Office of the Chairman, Administrative Conference, 2120 L Street, NW., Suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nancy G. Miller, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

AGENCY: Committee on Administration.

DATES: Thursday, March 23, 1995 at 10:00 a.m.; Wednesday, April 12, 1995 at 10:00 a.m.

LOCATION: Office of the Chairman, Administrative Conference, 2120 L Street NW., Suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: D. Leah Meltzer, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

AGENCY: Committee on Governmental Processes.

DATES: The meeting previously scheduled for Monday, March 13, 1995, at 12:30 p.m. has been cancelled. A new meeting will be scheduled for later in March.

FOR FURTHER INFORMATION CONTACT: Deborah S. Laufer, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, D.C. Telephone: (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Committee on Rulemaking will meet to discuss several topics relating to rulemaking. The topics will include a report on ''interim final rules,'' prepared by Professor Michael Asimow of UCLA Law School, a report on ''direct final rulemaking,'' by Professor Ronald Levin of Washington University School of Law, and a report on agency review of existing rules, by Professor Sidney Shapiro of the University of Kansas Law School.

The Committee on Adjudication will meet to begin discussion of a report on the use of Rule 11-type sanctions in administrative-level adjudications. The report is being prepared by Professor Carl Tobias of the University of Montana School of Law.

The Committee on Administration will meet to discuss reports on two topics. A report on the potential uses of alternative dispute resolution techniques for resolving conflicts between endangered species and development interests was prepared by Professors Steven L. Yaffee and Julia M. Wondolleck of the University of Michigan. A second report, by Professor Mark H. Grunewald of Washington and Lee University School of Law, addresses the Freedom of Information Act and Confidentiality of Records in Alternative Dispute Resolution.

The Committee on Governmental Processes will reschedule its meeting to continue discussion of when federal government lawyers and other government employees may participate in public service activities. There are possible restrictions in the Code of Professional Responsibility, in agency regulations governing outside activities, and in government-wide rules concerning use of government instrumentalities.

Attendance at the meetings is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The chairman of each committee, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of each meeting will be available on request.

Dated: March 2, 1995.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 95–5586 Filed 3–6–95; 8:45 am]

BILLING CODE 6110–01–W

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV–94–704]

Debt Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) hereby gives notice that, in an effort to collect delinquent assessments (debts) from persons and commercial entities under research and promotion programs and fruit and vegetable marketing orders, AMS will implement the debt collection procedures set forth in 7 CFR 3.1 through 3.36. Under these debt collection procedures, AMS will report delinquent debts to credit reporting agencies or will institute administrative offset against debtors, or both. These actions apply to both current and future delinquent debts and are necessary for effective enforcement of the various programs.

FOR FURTHER INFORMATION CONTACT: *For research and promotion programs*—Martha B. Ransom, Research and Promotion Branch, Fruit and Vegetable

Division, AMS, USDA, Room 2535–S, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9915; *for marketing orders*—Barbara Schulke, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–4607.

SUPPLEMENTARY INFORMATION: AMS administers certain marketing programs that require industry members, such as producers, handlers, and importers, to pay assessments to fund the programs. Persons or commercial entities under these programs are required by law to report their production, handling, or importing of the regulated commodity and to remit the applicable assessment to an industry board or committee under AMS supervision.

Whenever and wherever feasible, all agencies of the U.S. Department of Agriculture (USDA) must use, or request another Federal agency to use, administrative offset in accordance with 31 U.S.C. 37616 and 4 CFR 102.3 to collect debts due to the United States through the USDA or its instrumentalities. The debt need not be reduced to a judgment or be undisputed. The offset will be effective 31 days after the debtor receives a Notice of Intent to Collect by Administrative Offsets, or when a stay of offset expires, unless AMS determines that immediate action is necessary under 7 CFR 3.26.

Furthermore, consistent with the requirements of 31 U.S.C. 3711(f), 4 CFR 102.3(c), and 5 U.S.C. 522a, AMS may report to credit reporting agencies all commercial debts and all delinquent consumer debts owed to the USDA or its instrumentalities.

This debt collection procedure affects marketing agreements and orders covering fruits, vegetables, and specialty crops under the Agricultural Marketing Agreement Act of 1937, as amended; and under research and promotion programs authorized under a variety of statutes, as amended. These statutes are the Beef Promotion and Research Act of 1985; the Cotton Research and Promotion Act; the Dairy Production Stabilization Act of 1983; the Egg Research and Consumer Information Act; the Fluid Milk Promotion Act of 1990; the Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act of 1993; the Honey Research, Promotion, and Consumer Information Act; the Lime Research, Promotion, and Consumer Information Act of 1990; the Mushroom Promotion, Research, and Consumer Information Act of 1990; the Pork Promotion, Research, and Consumer Information Act of 1985; the Potato Research and Promotion Act; the Soybean Promotion, Research, and Consumer Information Act; and the Watermelon Research and Promotion Act.

Authority: 5 U.S.C. 5514; 7 U.S.C. 601–674, 2101–2118, 2611–2627, 2701–2718, 2901–2911, 4501–4513, 4601–4612, 4801–4819, 4901–4916, 6101–6112, 6201–6212, 6301–6311, 6401–6417, 6801–6814; 12 U.S.C. 1150; 31 U.S.C. 3701, 3711, 3716–3719, 3720A, 3728; 26 U.S.C. 61; 4 CFR 102, 105.2, 105.4; and 5 CFR 550, subpart K.

Dated: March 1, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–5541 Filed 3–6–95; 8:45 am]

BILLING CODE 3410–02–P

Forest Service

Ecosystem Management Workshop Planning Group

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Ecosystem Management Workshop Planning Group, composed of only federal members, will have its first meeting in Washington, DC, on March 17, 1995, from 1 p.m. to 3 p.m. The Planning Group wishes to solicit public input from interested individuals for the planning and implementation of a proposed ecosystem management workshop. The workshop is being designed to bring together technical, social, economic, and policy experts to develop the framework for the sustainable use of natural resources. The actual date of the workshop ''Developing a National Framework for Ecosystem Management'' has yet to be decided, but is proposed to be held between October 1 and December 15, 1995. Participation in the workshop planning process is open to the public. Persons who wish to participate can do so by attending a Planning Group meeting or by filing written statements with the Executive Secretary of the Planning Group before or after each Planning Group meeting.

DATES: The Ecosystem Management Workshop Planning Group will meet Friday, March 17, and Friday, March 24, and every other Friday after March 24, 1995, until the workshop is held.

ADDRESSES: Each meeting will be held at the office of the Forest Service's International Forestry Staff, Franklin Court Building, Suite 5500–W, 1099 14th Street NW., Washington, DC.

Send written comments to Robert C. Szaro, Executive Secretary, Ecosystem Management Workshop Planning Group, USDA Forest Service, Research Staff, P.O. Box 96090, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: For information about this notice contact Robert C. Szaro, telephone: (202) 205–1697.

Please call (202) 205–0884 prior to each Planning Group meeting for confirmation of meeting time and for additional information about the meetings.

SUPPLEMENTARY INFORMATION: The Forest Service is seeking public input in the areas of: Scientific consensus regarding the specific components of ecosystem management; the relationship of ecosystem management to sustaining ecosystems and maintaining biological diversity; the past, present, and future relationships of people to ecosystems; and issues related to implementing ecosystem management.

Goals for the workshop include establishing a scientific foundation for ecosystem management and developing definitive recommendations for its implementation.

The second meeting of the Ecosystem Management Workshop Planning Group will be held on March 24, 1995. Successive meetings will be held on every other Friday thereafter until the workshop is held.

Dated: March 1, 1995.

Jack Ward Thomas,

Chief.

[FR Doc. 95–5498 Filed 3–6–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1994 Survey of Women–Owned Businesses.

Form Number(s): WB–1.

Agency Approval Number: 0607–0765–EXPEDITED REVIEW.

Type of Request: Revision of a currently approved collection.

Burden: 65,000 hours.

Number of Respondents: 130,000.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Bureau of the Census will conduct the 1994 Survey of Women–Owned Businesses (WOB) to determine the size of the women–owned subset of sole proprietorships, corporations, and partnerships. The

WOB is designed to collect data on the ownership characteristics of a sample of businesses to determine which are owned by women. Additionally, the survey will gather information on the viability and growth of these businesses. Federal, state, and local governments use WOB statistics as a framework for assessing and directing programs designed to promote the activities of women–owned businesses.

Affected Public: Business or other for–profit organizations.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 1, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

BILLING CODE 3510–07–F

U.S. DEPARTMENT OF COMMERCE **BUREAU OF THE CENSUS** **1201 EAST 10TH STREET** **JEFFERSONVILLE, IN 47134-0001** **1994 SURVEY OF BUSINESSES**	**NAME** **ADDRESS**

Dear Survey Respondent:

The Census Bureau is conducting a business survey to improve the effectiveness of Federal programs aimed at facilitating new business starts and subsequent growth opportunities. The survey is being sent to a sample of businesses with paid employees. The data collected will measure the impact of businesses on the economy in terms of jobs provided and receipts or income generated. A summary of findings from this survey will be published in 1996.

Please complete and return the survey in the enclosed envelope within 15 days. Estimates are acceptable. Information collected from individual businesses is held confidential. Only Census Bureau employees will see your report and will use the data for statistical analysis only. Although response is voluntary, your data are needed to make the results complete. Timely response will also reduce the cost of reminder mailings.

On the back of this form are answers to questions you might have regarding this survey. If you have additional questions, please phone 1-800-354-7271 from 8 a.m. to 5 p.m eastern time.

Thank you for your cooperation.

Sincerely,

Martha Farnsworth Riche
Director
Bureau of the Census

Name of person to contact regarding this report.	Telephone Number

1. **Is this business still in operation?**
If not in operation at anytime in 1994, mark 'No' to Item 1, sign form on page 1, and return form in the provided envelope.

☐ Yes
☐ No ➜ Please continue to answer this questionnaire if you were in business **anytime** during 1994.

2 a. **Check the one box below which best reflects the gender of the majority of ownership of this business at the end of 1994. If the business ceased operations during 1994, report for ownership at the close of operations.**

- *SOLE PROPRIETORSHIPS (IRS 1040C filers) not jointly owned should check the appropriate box. If owned by both husband and wife, check the box that corresponds to the primary owner if the business is not equally owned.*
- *CORPORATIONS and SUBCHAPTER S CORPORATIONS should answer based upon percent of outstanding stock. Corporations for which the gender of all stockholders is not available should base their answer on the percent of ownership for owners listed on Form 10-K.*
- *PARTNERSHIPS should answer based upon the percent of ownership of the partners.*

☐ Female
☐ Male
☐ Male/Female - equal percent of ownership
☐ Not owned by individuals (for example: a corporation whose shareholders are other corporations)

b. **If you are a corporation other than a subchapter S corporation, check the answer that best describes the basis for the answer to item 2a.**

☐ Total outstanding stock
☐ Percent of stock for owners reported on Form 10-K
☐ Other - specify ➜ _____

	1994	1993	1992
3 a. • **Total Employment as of March 12** *Report for all employees as defined on Treasury Form 941.*	_____	_____	_____
• **Average Number of Full-Time Employees during** *Full-time employees are employees who work on average 35 or more hours per week.*	_____	_____	_____
• **Average Number of Part-Time Employees during** *Part-time employees are employees who work on average less than 35 hours per week.*	_____	_____	_____
b. **Total Annual Payroll** *Report total annual payroll as defined on Treasury Form 941.*	$_____	$_____	$_____
c. **Total Wage/Labor/Commission Expenses NOT reflected in payroll.** *Include cost of contract labor.*	$_____	$_____	$_____
d. **Total Gross Sales and Receipts** *Report sales as reported on your 1994 tax return. 1120-L, 1120-PC filers should use gross income from Schedule A. 1120-RIC filers should use total income. Finance, insurance, and real estate businesses should include interest, dividends, commissions, and rental income.*	$_____	$_____	$_____
e. **Total Assets as of December 31** *Total assets should include both domestic and foreign assets.*	$_____	$_____	$_____
f. **Number of Business Locations as of December 31**	_____	_____	_____

4. **Estimate the Percentage of Total Sales/Receipts for 1994 accounted for by each of the following:**
The total of the percentages for Items 4a - 4f should equal 100.

a. _____% Federal government *(Include purchases for exports, if known.)*
b. _____% State and local government
c. _____% A subcontractor or supplier to another business to fill Federal government orders or contracts
d. _____% A subcontractor or supplier to another business to fill State/local government orders or contracts
e. _____% Nongovernment domestic customers
f. _____% Exports *(Include exports to foreign governments.)*

5 b. **Was this business operated primarily from a home:**

	When Founded?	In 1994?
Yes	☐	☐
No	☐	☐
Do Not Know	☐	

6 a. **Are there plans to expand this business by:** *(Check all that apply)*

	In 1995	1996	1997	1998
Increasing number of employees	☐	☐	☐	☐
Permanently increasing number of hours worked by owner(s) and/or employees	☐	☐	☐	☐
Adding new products or services	☐	☐	☐	☐
Increasing number of locations	☐	☐	☐	☐
Expanding into international markets	☐	☐	☐	☐
Expanding sales and/or services to government or as a supplier or subcontractor to fill government orders or contracts	☐	☐	☐	☐

b. **What will be the source(s) of any additional capital needs?** (Check all that apply)

- ☐ Business loan from bank or commercial lending institution
- ☐ Corporate or business credit card
- ☐ Government guaranteed loan from bank or commercial lending institution
- ☐ Loan from Federal, State, or local government
- ☐ Loan from other profit or nonprofit source (for example foundation, venture capitalist, etc.)
- ☐ Additional investment from owners
  - *Include:*
    - *equity/stock offerings*
    - *addition of new partners*
    - *additional investment of funds/assets from current owners regardless of source*
- ☐ Reinvestment of profits
- ☐ Supplier credit
- ☐ Other - specify ➜ _____

7. a. **Has difficulty obtaining credit in the past five years affected this business's ability to expand or remain in operation?**

- ☐ Yes
- ☐ No ➜ *Continue to Item 8*
- ☐ Not applicable ➜

b. **If 'Yes', what is the status of funding requests made from the following:** *(Check all that apply.)*

	Pending approval	Denied loan	Received fewer funds than requested	Loan approved as requested
Bank or other commercial lending institution	☐	☐	☐	☐
Government guaranteed loan from a bank or commercial lending institution	☐	☐	☐	☐
Loan from Federal, State or local government	☐	☐	☐	☐
Loan from other profit or nonprofit source (e.g., foundation, venture capitalist, etc.)	☐	☐	☐	☐

> If your business has 10 employees or more, sign form and return in the provided envelope. If your business has less than 10 employees, please continue.

8 a. **Since 1992, has your business been able to expand as planned?**

- ☐ Yes ➜
- ☐ Not applicable-- Did not plan to expand. ➜ Stop here. Sign form and return in provided envelope.
- ☐ No

b. **Which of the following prevented your business from expanding as planned?** *(Check all that apply).*

- ☐ Cost of capital
- ☐ Availability of capital
- ☐ Cost of labor
- ☐ Availability of labor
- ☐ Cost of raw materials
- ☐ Availability of raw materials

Remarks:

QUESTIONS AND ANSWERS REGARDING THE
1994 SURVEY OF BUSINESSES

- **Why is this survey being taken?**

The Census Bureau has been asked to conduct this survey for several Federal agencies. The results of this survey will be used to make better policy decisions that will improve the effectiveness of their Federal programs.

- **Who uses the survey data?**

Persons and institutions in both the public and private sectors extensively use these survey data. Private companies and trade associations use the data to analyze industry trends; educators use them in teaching and research; the media use them in news articles; and Federal, State, and local governments uses them for policy decisions.

- **Can I be paid for completing this report?**

No. The law (Title 13 of the United States Code) that directs the Census Bureau to conduct the economic census and supplemental surveys does not authorize payment for completing census reports. In addition, no funds have been appropriated for this purpose.

- **Why was I selected for this survey?**

You are part of a small sample of businesses that we randomly selected to represent your type of business and geographic area. The use of a sample substantially limits the reporting burden of small businesses and reduces the survey cost; however, it also greatly increases the importance of receiving a report form from each business selected.

- **What business are included in this survey?**

Businesses were eligible to be selected for this survey if they reported any employment or payroll on Treasury Form 941 "Employer's Quarterly Federal Tax Return" or Treasury Form 943 "Employer's Annual Tax Return for Agricultural Employees", for the year 1994.

- **Is each survey response kept confidential?**

Yes. By law, the Census Bureau cannot give individual responses to anyone (including government agencies) for any purpose. Survey responses are immune from legal action and exempt from the provisions of the Freedom of Information Act. Census Bureau tabulations summarize responses so that the confidentiality of respondents and their business activities is fully protected.

- **How can I get more information?**

Call 1-800-354-7271 Monday through Friday, 8 a.m. to 5 p.m. eastern time. Our telephone staff can answer survey questions as well as provide you with additional forms and instructions.

We estimate that it will take 30 minutes or less to complete this questionnaire. If you have any comments regarding these estimates or any other aspect of this survey, send them to the Associate Director for Administration, Paperwork Reduction Project 0607-XXXX, room 3104, FB 3, Bureau of the Census, Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0607-XXXX, Washington, DC 20503.

[FR Doc. 95–5477 Filed 3–6–95; 8:45 am]
BILLING CODE 3510–07–C

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 353.22 or 355.22 of the Department of Commerce (the Department) Regulations (19 CFR 353.22/355.22 (1993)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than March 31, 1995, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in March for the following periods:

Antidumping duty proceedings	Period
Australia: Canned Bartlett Pears (A–602–039)	03/01/94–02/28/95
Bangladesh: Shop Towels (A–538–802)	03/01/94–02/28/95
Brazil: Ferrosilicon (A–351–820)	08/16/93–02/28/95
Brazil: Lead and Bismuth Steel (A–351–811)	03/01/94–02/28/95
Canada: Iron Construction Castings (A–122–503)	03/01/94–02/28/95
Chile: Standard Carnations (A–337–603)	03/01/94–02/28/95
Colombia: Certain Fresh Cut Flowers (A–301–602)	03/01/94–02/28/95
Ecuador: Certain Fresh Cut Flowers (A–331–602)	03/01/94–02/28/95
France: Brass Sheet and Strip (A–427–602)	03/01/94–02/28/95
France: Lead and Bismuth Steel (A–427–804)	03/01/94–02/28/95
Germany: Brass Sheet and Strip (A–428–602)	03/01/94–02/28/95
Germny: Lead and Bismuth Steel (A–428–811)	03/01/94–02/28/95
India: Sulfanilic Acid (A–533–806)	03/01/94–02/28/95
Israel: Oil Country Tubular Goods (A–508–602)	03/01/94–02/28/95
Italy: Certain Valves and Connections of Brass, for Use in Fire Protection Systems (A–475–401)	03/01/94–02/28/95
Italy: Brass Sheet Strip (A–475–601)	03/01/94–02/28/95
Japan: Defrost Timers (A–588–829)	08/24/93–02/28/95
Japan: Stainless Steel Butt-Weld Pipe Fittings (A–588–702)	03/01/94–02/28/95
Japan: Television Receivers, Monochrome and Color (A–588–015)	03/01/94–02/28/95
Mexico: Steel Wire Rope (A–201–806)	03/01/94–02/28/95
Korea: Steel Wire Rope (A–580–811)	03/01/94–02/28/95
Sweden: Brass Sheet and Strip (A–401–601)	03/01/94–02/28/95
Taiwan: Light-Walled Welded Rectangular Carbon Steel Tubing (A–583–803)	03/01/94–02/28/95
Thailand: Certain Circular Welded Carbon Steel Pipes and Tubes (A–549–502)	03/01/94–02/28/95
The People's Republic of China: Chloropicrin (A–570–002)	03/01/94–02/28/95
The People's Republic of China: Ferrosilicon (A–570–819)	03/01/94–02/28/95
United Kingdom: Lead and Bismuth Steel (A–412–810)	03/01/94–02/28/95
Suspension Agreements	
Brazil: Frozen Concentrated Orange Juice (C–351–005)	01/01/94–12/31/94
Colombia: Certain Textile Mill Products (C–301–401)	03/01/94–02/28/95
Thailand: Certain Textile Mill Products (C–301–401)	03/01/94–02/28/95
Countervailing Duty Proceedings	
Argentina: Certain Apparel (C–357–404)	01/01/94–12/31/94
Argentina: Certain Textile Mill Products (C–357–404)	01/01/94–12/31/94
Argentina: Leather Wearing Apparel (C–357–001)	01/01/94–12/31/94
Brazil: Certain Caster Oil Products (C–351–029)	01/01/94–12/31/94
Brazil: Cotton Yarn (C–351–037)	01/01/94–12/31/94
Brazil: Hot-Rolled Steel and Bismuth Carbon Steel Plate (C–351–812)	01/01/94–12/31/94
Chile: Standard Carnations (C–337–601)	01/01/94–12/31/94
France: Brass Sheet and Strip (C–427–603)	01/01/94–12/31/94
France: Hot-Rolled Lead and Bismuth Carbon Steel Plate (C–428–812)	01/01/94–12/31/94
Germany: Hot-Rolled Lead and Bismuth Carbon Steel Plate (C–428–812)	01/01/94–12/31/94
India: Sulfanilic Acid (C–533–807)	01/01/94–12/31/94
Iran: In-Shell Pistachios (C–507–501)	01/01/94–12/31/94
Israel: Oil Country Tubular Goods (C–508–601)	01/01/94–12/31/94
Mexico: Certain Textile Mill Products (C–201–405)	01/01/94–12/31/94
Netherlands: Standard Chrysanthemums (C–421–601)	01/01/94–12/31/94
New Zealand: Carbon Steel Wire Rod (C–614–504)	01/01/94–12/31/94
Pakistan: Cotton Shop Towels (C–535–001)	01/01/94–12/31/94
Peru: Certain Textile Mill Products (C–333–402)	01/01/94–12/31/94
Peru: Certain Apparel (C–333–402)	01/01/94–12/31/94
South Africa: Ferrochrome (C–792–001)	01/01/94–12/31/94
Sri Lanka: Certain Textile Mill Products (C–542–401)	01/01/94–12/31/94
Thailand: Certain Apparel (C–549–401)	01/01/94–12/31/94
Turkey: Certain Welded Carbon Steel Pipe and Tube (C–489–502)	01/01/94–12/31/94
Turkey: Welded Carbon Steel Line Pipe (C–489–502)	01/01/94–12/31/94
United Kingdom: Hot-Rolled Lead and Bismuth Carbon Steel Plate (C–412–811)	01/01/94–12/31/94

In accordance with sections 353.22(a) and 355.22(a) of the regulations, an interested party as defined by section 353.2(k) may request in writing that the Secretary conduct an administrative review. For antidumping reviews, the interested party must specify for which individual producers or resellers covered by an antidumping finding or order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which were produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: John Kugelman, in room 3065 of the main Commerce Building. Further, in accordance with section 353.31(g) or 355.31(g) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the Federal Register a notice of ''Initiation of Antidumping (Countervailing) Duty Administrative Review,'' for requests received by March 31, 1995. If the Department does not receive, by March 31, 1995, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: March 1, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–5560 Filed 3–6–95; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

[I.D. 022895A]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council and South Atlantic Fishery Management Council (Councils) will hold a meeting of their joint Mackerel Stock Assessment Panel (Panel) beginning at 1:00 p.m. on March 21, 1995, and concluding on March 23, 1995. The Panel will review available data on Gulf of Mexico and Atlantic stocks of king and Spanish mackerels and cobia to determine the condition of the stocks, and to recommend to the Councils levels of acceptable biological catch for the 1995–96 fishing years.

ADDRESSES: The meeting will be held at the National Marine Fisheries Service Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL.

FOR FURTHER INFORMATION CONTACT: Terrance R. Leary, Fishery Biologist, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Tampa, FL 33609; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs at the above address by March 14, 1995.

Dated: March 1, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management. National Marine Fisheries Service.

[FR Doc. 95–5528 Filed 3–6–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 022895E]

Pacific Fishery Management Council; Public Meetings and Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of reports; notice of public meetings and hearings; request for comments.

SUMMARY: The Pacific Fishery Management Council has begun its annual preseason management process for the 1995 ocean salmon fisheries. This notice announces the availability of Council documents and the dates and locations of Council meetings and public hearings. Notices of meetings and hearings, and their respective agendas, will be published in the Federal Register prior to each meeting or hearing.

DATES: See **SUPPLEMENTARY INFORMATION** for dates and times of public meetings and hearings in March and April. Written comments on the season options must be received by March 29, 1995.

ADDRESSES: Written comments should be sent to Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201; telephone: (503) 326–6352. See **SUPPLEMENTARY INFORMATION** for meeting and hearing locations in California, Oregon, and Washington.

FOR FURTHER INFORMATION CONTACT: John Coon, Salmon Fishery Management Coordinator, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION:

The following actions comprise the complete schedule of events followed by the Council for determining the annual proposed and final modifications to ocean salmon management measures.

March 1, 1995: Council reports which summarize the 1994 salmon season and project the expected salmon stock abundance for 1995 were made available to the public from the Council office.

March 6–10, 1995: Council and advisory entities meet at the Holiday Inn San Francisco International Airport North, South San Francisco, CA, to adopt 1995 regulatory options for public review. (See 60 FR 9325, February 17, 1995.)

March 20, 1995: Report with proposed management options and public hearing schedule is mailed and made available to the public (see **ADDRESSES**). (The report includes options, rationale, and a summary of biological and economic impacts.)

March 27–29, 1995: Public hearings are held to receive comments on the proposed ocean salmon fishery regulatory options adopted by the Council (see below).

April 3–7, 1995: The Council and its advisory entities meet at the Red Lion Hotel Columbia River, 1401 North Hayden Island Drive, Portland, OR, to adopt final 1995 regulatory measures.

April 13, 1995: A newsletter describing adopted ocean salmon fishing management measures is mailed

and made available to the public (see **ADDRESSES**).

April 7–21, 1995: Salmon Technical Team completes the Preseason Report III Analysis of Council Adopted Regulatory Measures for 1995 Ocean Salmon Fisheries.

May 1, 1995: Federal regulations are implemented and the preseason report is available for distribution to the public.

Public Hearings

All public hearings will begin at 7 p.m. on the dates and at the locations specified below.

March 27, 1995: Westport High School Commons, 2850 S. Montesano Street, Westport, WA.

March 28, 1995: Red Lion Inn, Chinook Room, 400 Industry, Astoria, OR.

March 28, 1995: Red Lion Inn, Evergreen Room, 1929 Fourth Street, Eureka, CA.

March 29, 1995: Pony Village Motor Inn, Ballroom, Virginia Avenue, North Bend, OR.

March 29, 1995: California Department of Fish and Game, Auditorium, 1416 Ninth Street, Sacramento, CA

These public meetings and hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: March 1, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–5545 Filed 3–6–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 030195A]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Scientific and Statistical Committee (SSC) of the Western Pacific Fishery Management Council (Council) will hold its 59th meeting on March 21–23, 1995.

The meeting will be held from 8:00 a.m. until 5:00 p.m., each day, in Room 322–A, Kalanimoku Building, 1151 Punchbowl St., Honolulu, HI 96813.

The SSC will discuss and may make recommendations to the Council on the following topics: Status of the Pelagic Fisheries Research Program; development of a pelagic fisheries biological research plan; U.N. Conference on Straddling and Highly Migratory Fish Stocks; Hawaii bottomfish issues (including status of *onaga* and *ehu* management, and NMFS review of Northwestern Hawaiian Islands catch reporting system); coral reef management needs; defining marine recreational fishing/fishermen; other business as required.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Regional Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI 96813; telephone 808–522–8220.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: March 1, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–5529 Filed 3–6–95; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

AmeriCorps* Leaders Program (AC*L); Information Collection Request

AGENCY: Corporation for National and Community Service.

ACTION: Information Collection Request Submitted to the Federal Office of Management and Budget (FOMB) for Review.

SUMMARY: This notice provides information about a data collection proposal by AmeriCorps* Leaders, currently under review by the Office of Management and Budget (OMB). The revised AmeriCorps Leaders Application is a document, based on the previously approved Leaders application (OMB Approval No. 3045–0005). It is to be used for the purpose of screening applicants in the recruitment process for the AmeriCorps Leaders. The revisions are as follows:

A. Page One, section III., ''National and Community Service Background,'' was redesigned with the, ''Skills and Employment History,'' title. This section requests Leader applicants complete the following ''Skills Self-Assessment'' and to attach a resume-type document which includes a listing of professional experience and service organizations with whom the applicant has worked.

B. The section IV., ''Skills in National Service Priority Areas'', was replaced with a ''Skills Self-Assessment.''

C. The applicant reference form was expanded to include a skills assessment from the reference. The skills assessment form works with the same list as the self-assessment form.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. OMB and AmeriCorps* Leaders will consider comments on the proposed collection of information and record keeping requirements received by April 6, 1995.

ADDRESSES:

Janet Peters Mauceri, Director, AmeriCorps* Leaders, 1201 New York Avenue, NW., Washington, DC 20525.

Dan Chenok, Desk Officer for Corporation for National Service, Office of Management and Budget, 3002 New Executive Office Bldg., Washington, DC 20503. Send comments to both:

*This document will be made available in alternate format upon request: TDD–(202) 565–2799.

FOR FURTHER INFORMATION CONTACT: Julie Huffaker (202) 606–5000 ext. 164.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests.

Office of Action Issuing Proposal: AmeriCorps* Leaders.

Title of Forms: AmeriCorps* Leader Application.

Needs and Use: AmeriCorps* Leaders is requesting information to meet requirements of federal law. This information is used for program management, planning, and required record keeping.

Type of Request: Submission of a new collection.

Respondent's Obligation to Reply: Required to receive benefits.

Frequency of Collection: On occasion.

Estimated Number of Responses: 500.

Average Burden Hours Per Response: 2 hours (reporting and record keeping).

Estimated Annual Reporting or Disclosure Burden: 1,000 hours.

Regulatory Authority: 1990 National Service Act (as amended).

Dated: March 21, 1995.

Janet Peters Mauceri,

Director, AmeriCorps Leaders.

[FR Doc. 95–5544 Filed 3–6–95; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF EDUCATION

[CFDA NO: 84.031A]

Strengthening Institutions Program; Notice Inviting Applications for New Awards for Fiscal Year 1995

Purpose of Program: Provide grants to eligible institutions of higher education to improve their academic quality, institutional management, and fiscal stability so they can become self-sufficient.

This grant program should be seen as an opportunity for applicants to support those elements of the National Education Goals that are relevant to their unique missions.

Deadline for Transmittal of Applications: May 1, 1995.

Deadline for Intergovernmental Review: June 30, 1995.

Applications Available: Applications will be mailed by March 13, 1995 to the office of the president of all institutions that were mailed applications to be designated as eligible to apply for a grant under the Strengthening Institutions Program.

Available Funds: $12,000,000.

Estimated Range of Awards: $300,000 to $350,000 per year for development grants only.

Estimated Average Size of Awards: $325,000 per year for five-year development grants only.

Estimated Number of Awards: 36 development grants only.

Project Period: 60 months for development grants.

Note: The Department is not bound by any estimates in this notice.

Special Funding Considerations: In tie-breaking situations described in 34 CFR 607.23 of the Strengthening Institutions program regulations, 34 CFR 607.23, the Secretary awards additional points under § 607.22 to an application from an institution which has an endowment fund for which the current market value, per full-time equivalent (FTE) student, is less than the average, per FTE student, at similar type institutions; and has expenditures for library materials, per FTE student, which are less than the average, per FTE student, at similar type institutions.

For the purposes of these funding considerations, an applicant must be able to demonstrate that the current market value of its endowment fund, per FTE student, or expenditures for library materials, per FTE student, is less than the following national average for base year 1992–93.

	Average market value of endowment fund, per FTE	Average library expenditures for materials, per FTE
Two-year public institutions	$1,222	$41
Two-year nonprofit, private institutions	12,600	104
Four-year public institutions	1,862	141
Four-year nonprofit	32,164	239

Applicable Regulations: (a) The Department of Education General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 82, 85, and 86; and (b) the regulations for this program in 34 CFR Part 607.

SUPPLEMENTARY INFORMATION: On August 15, 1994, the Secretary published a notice of final rulemaking for this program in the Federal Register (59 FR 41914).

For Fiscal Years 1995 and 1996, the Department will conduct biennial grant award competitions under the Strengthening Institutions Program. Under a biennial grant award competition, an institution submits a grant application that may be considered for funding under two successive fiscal year grant award competitions. Applications are evaluated and ranked by field readers for the first competition. If the institution's application is not selected for funding under the first fiscal year's award competition, it will be considered for funding under the second fiscal year's award competition for new awards, based upon the score it received in the first competition. As part of the plan, the Secretary will not invite applications for new awards for the second fiscal year. Accordingly, if an institution wishes to apply for a new grant award under the Strengthening Institutions Program for Fiscal Year 1995 or Fiscal Year 1996, it must submit an application by the closing date of May 1, 1995. An applicant should identify the fiscal year (1995 and/or 1996) from which it seeks funding.

No planning grants will be awarded under this competition.

FOR FURTHER INFORMATION CONTACT: Louis J. Venuto, U.S. Department of Education, 600 Independence Avenue, SW., Portals Building, Suite 600, Washington, DC 20202–5335. Telephone: (202) 708–8839. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press releases). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 1057.

Dated: March 1, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–5454 Filed 3–6–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site Specific Advisory Board; Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Savannah River Site.

DATES AND TIMES: Monday, March 27, 1995: 6:00 p.m.–7 p.m. (public comment session).

Tuesday, March 28, 1995: 8:30 a.m. to 4:00 p.m.

ADDRESSES: The public comment session and board meeting will be held at: Hyatt Regency Savannah, Two West Bay Street, Savannah, GA.

FOR FURTHER INFORMATION CONTACT: Tom Heenan, Manager, Environmental Restoration and Solid Waste, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802 (803) 725–8074.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

Monday, March 27, 1995

6:00 p.m.—Public Comment Session (5-minute rule)
7:00 p.m.—Adjourn

Tuesday, March 28, 1995

8:30 a.m.—Board organizational issues
9:30 a.m.—Membership Replacement Election
10:00 a.m.—Subcommittee Reports
3:30 p.m.—Public Comment Session (5-minute rule)
4:00 p.m.—Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details.

A final agenda will be available at the meeting Monday, March 27, 1995.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Heenan's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday except Federal holidays. Minutes will also be available by writing to Tom Heenan, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, or by calling him at (803) 725–8074.

Issued at Washington, DC, on March 1, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–5480 Filed 3–6–95; 8:45 am]

BILLING CODE 6450–01–P

Advisory Committee on Human Radiation Experiments

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

DATE AND TIME: March 15, 1995, 1:00 a.m.–5:00 p.m.; March 16, 1995, 8:30 a.m.–4:30 p.m.; March 17, 1995, 8:00 a.m.–4:00 p.m.

PLACE: The Madison Hotel, 15th and M Streets, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steve Klaidman, The Advisory Committee on Human Radiation Experiments, 1726 M Street, NW., Suite 600, Washington, DC 20036. Telephone: (202) 254–9795 Fax:(202) 254–9828.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Advisory Committee on Human Radiation Experiments was established by the President, Executive Order No. 12891, January 15, 1994, to provide advice and recommendations on the ethical and scientific standards applicable to human radiation experiments carried out or sponsored by the United States Government. The Advisory Committee on Human Radiation Experiments reports to the Human Radiation Interagency Working Group, the members of which include the Secretary of Energy, the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, the Attorney General, the Administrator of the National Aeronautics and Space Administration, the Director of Central Intelligence, and the Director of the Office of Management and Budget.

Tentative Agenda

Wednesday, March 15, 1995

1:00 p.m.—Call to order and Opening Remarks
1:05 p.m.—Public Comment
3:15 p.m.—Discussion, Committee Strategy and Direction
5:00 p.m.—Meeting Adjourned

Thursday, March 16, 1995

8:30 a.m.—Opening Remarks
8:40 a.m.—Discussion, Committee Strategy and Direction
12:15 p.m.—Lunch
1:30 p.m.—Discussion, Committee Strategy and Direction (continued)
4:30 p.m.—Meeting Adjourned
Friday, March 17, 1995
8:00 a.m.—Opening Remarks
8:05 a.m.—Discussion, Committee Strategy and Direction
12:15 p.m.—Lunch
1:30 p.m.—Discussion, Committee Strategy and Direction (continued)
4:00 p.m.—Meeting Adjourned

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. The chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make a five-minute oral statement should contact Kristin Crotty of the Advisory Committee at the address or telephone number listed above. Requests must be received at least five business days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. This notice is being published less than 15 days before the date of meeting due to programmatic issues that had to be resolved prior to publication.

Transcript: Available for public review and copying at the office of the Advisory Committee at the address listed above between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on March 1, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–5481 Filed 3–6–95; 8:45 am]

BILLING CODE 6450–01–P

Advisory Committee on External Regulation of Department of Energy Nuclear Safety

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the first meeting of the Advisory Committee on External Regulation of Department of Energy Nuclear Safety. This public meeting was previously published in the Federal Register (Vol. 60, No. 35), February 22, 1995.

DATES AND TIMES: Thursday, March 9, 1995, 8:30 a.m. to 5:00 p.m.; and Friday, March 10, 1995, 8:30 a.m. to 3:30 p.m.

ADDRESSES: United States Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Catherine Volk, Advisory Committee on External Regulation of Department of Energy Nuclear Safety, 1726 M Street, NW., Suite 401, Washington, DC 20036, (202) 254–3826.

SUPPLEMENTARY INFORMATION:

Tentative Agenda

March 9, 1995

Proposed Agenda

8:30 a.m.—Welcome: Hazel R. O'Leary, Secretary of Energy.

8:50 a.m.— Opening Remarks: Dr. John F. Ahearne, co-Chair.
9:00 a.m.—Introduction of Members: Advisory Committee Members.
9:30 a.m.—Administrative Setting: Advisory Committee Staff & DOE Internal Working Group, Federal Advisory Committee Act: Thomas H. Isaccs, Executive Director.
Considerations: Jo Anne Whitman, Deputy Advisory Committee Management Officer, DOE.
Conflict of Interest Requirements: Susan Beard, Deputy Assistant General Counsel for Standards of Conduct, DOE.
10:15 a.m.—Approval of Agenda for this Meeting: Dr. Ahearne.
10:30 a.m.—Break
10:45 a.m.—Summary of Background Materials: Mr. Isaacs.
11:15 a.m.—Overview of the Department of Energy: Donald W. Pearman, Jr., Associate Deputy Secretary for Field Management, DOE.
12 noon Lunch
1:30 p.m.—Overview of Current DOE Facilities and Materials: Robert Alvarez, Deputy Assistant Secretary for National Security & Environmental Restoration Policy, DOE.
2:15 p.m.—Overview of Existing Legal Framework for DOE Regulation & Current Legislation: Mary Anne Sullivan, Deputy General Counsel for Health, Safety, & Environment, DOE.
3:00 p.m.—Break
3:15 p.m.—Overview of Current DOE Practice for Contractor Oversight: Peter N. Brush, Principal Deputy Assistant Secretary for Environment, Safety, & Health, DOE.
4:00 p.m.—Public Comment Period: Dr. Ahearne.
Open Adjourn: Dr. Ahearne.

March 10, 1995

Proposed Agenda

8:30 a.m.—Opening Remarks: Gerard F. Scannell, co-Chair.
8:40 a.m.—Discussion of the Committee's Proposed Method of Operating: Committee.
9:15 a.m.—Principle Findings on Nuclear Safety at DOE Defense Program Facilities; Dr. John T. Conway, Chairman, Defense Nuclear Facility Safety Board.
10:00 a.m.—Break
10:15 a.m.—Committee Discussion of the Range of Safety Functions & Scope of Operations to be addressed by the Advisory Committee: Committee.
11:00 a.m.—Public Comment Period: Mr. Scannell.
12 noon—Lunch
1:30 p.m.—Identification of Committee Outputs & Tentative Schedule: Committee.
2:30 p.m.—Discussion of Subcommittees: Committee.
3:00 p.m.—Subcommittee & Staff Assignments, Next Meeting, Actions: Committee.
3:30 p.m.—Adjourn: co-Chairs.

Transcripts and Minutes: A meeting transcript and minutes will be available for public review and copying four to six weeks after the meeting at the DOE Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. The transcript also will be made available at the Department's Field Office Reading Room locations.

Issued at Washington, DC on March 2, 1995.

Gail Cephas,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–5557 Filed 3–6–95; 8:45 am]

BILLING CODE 6450–01–M

DOE Response to Recommendation 94–5 of the Defense Nuclear Facilities Safety Board, Integration of Department of Energy Safety Rules, Orders, and Other Requirements

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: Section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286(b) requires the Department of Energy to publish its response to Defense Nuclear Facilities Safety Board recommendations for notice and public comment. The Defense Nuclear Facilities Safety Board published Recommendation 94–5, concerning Integration of Department of Energy Safety Rules, Orders, and other requirements, in the Federal Register on January 6, 1995 (59 FR 2089).

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before April 6, 1995.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Dr. Tara O'Toole, M.D., M.P.H., Assistant Secretary for Environment, Safety and Health, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Washington, DC, on February 27, 1995.

Mark B. Whitaker,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

The Honorable John T. Conway, Chairman,
Defense Nuclear Facilities Safety Board, 625 Indiana Ave., NW., Suite 700, Washington, DC 20004.

Dear Mr. Chairman: This letter responds to your Recommendation 94–5, Integration of DOE Safety Rules, Orders, and Other Requirements, dated December 29, 1994. The Department accepts the Recommendation.

The Department recognizes, as your recommendation generally observes, that DOE expectations in the transition from nuclear safety Orders to rules, and the development of associated implementation plans for Orders, rules, and other necessary and sufficient safety requirements should be effectively communicated and understood. We agree that these initiatives and efforts require effective coordination, integration, and communication as the transition to revised Orders or new rules occurs.

The Department has already embarked on a course of actions that are and will be responsive to your recommendations. For example, we have widely disseminated the Department's response to your May 6, 1994 letter on DOE's Safety Management Program and we are actively monitoring activities to assure consistency with that response. Your general recommendation regarding a smooth and complete transition between Orders and rules largely will be addressed in a Policy Statement on Procedures for Developing, Implementing, and Achieving Compliance with Nuclear Safety Requirements currently in development by the Office of General Counsel, a draft of which has been furnished to you.

The Assistant Secretary, Environment, Safety and Health, in conjunction with the Office of General Counsel and Cognizant Program Offices, will develop the Department's Implementation Plan for this Recommendation in accordance with 42 USC 2286d.

Sincerely,

Hazel R. O'Leary.

[FR Doc. 95–5556 Filed 3–6–95; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER95–603–000 et al.]

Montaup Electric Company, et al.; Electric Rate and Corporate Regulation Filings

February 28, 1995.

Take notice that the following filings have been made with the Commission:

1. Montaup Electric Co.

[Docket No. ER95–603–000]

Take notice that on February 15, 1995, Montaup Electric Company (Montaup), filed a credit of $6,145,326.98 under its Purchased Capacity Adjustment Clause(PCAC) to true up the amounts billed in 1994 under a forecast billing rate to conform with actual purchased capacity costs. The credit will appear in bills for January 1995 service rendered for all requirements service to Montaup's affiliates Eastern Edison Company in Massachusetts and Blackstone Valley Electric Company and

Newport Electric Corporation in Rhode Island, and for contract demand service to two non-affiliates: Pascoag Fire District in Rhode Island and the Town of Middleborough in Massachusetts.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Central Hudson Gas and Electric Corp.

[Docket No. ER95–604–000]

Take notice that on February 15, 1995, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing a Service Agreement for the Federal Energy Regulatory Commission (Commission) between CHG&E and Enron Power Marketing, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Central Hudson Gas and Electric Corp.

[Docket No. ER95–605–000]

Take notice that on February 15, 1995, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing a Service Agreement for the Federal Energy Regulatory Commission (Commission) between CHG&E and Louis Dreyfus Electric Power. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Central Hudson Gas and Electric Corp.

[Docket No. ER95–606–000]

Take notice that on February 15, 1995, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing a Service Agreement for the Federal Energy Regulatory Commission (Commission) between CHG&E and Central Vermont Public Service Corporation. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Central Hudson Gas and Electric Corporation

[Docket No. ER95–607–000]

Take notice that on February 15, 1995, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing a Service Agreement for the Federal Energy Regulatory Commission (Commission) between CHG&E and New York State Electric & Gas Corporation. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Central Hudson Gas and Electric Corp.

[Docket No. ER95–608–000]

Take notice that on February 15, 1995, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing a Service Agreement for the Federal Energy Regulatory Commission (Commission) between CHG&E and Long Island Lighting Company. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power Corp.

[Docket No. ER95–609–000]

Take notice that on February 15, 1995, Florida Power Corporation (FPC), tendered for filing a contract for the provision of interchange service between itself and Enron Power Marketing, Inc. (EPMI). The contract provides for service under Schedule J, Negotiated Interchange Service and OS, Opportunity Sales. Cost support for both schedules have been previously filed and approved by the Commission. No specifically assignable facilities have been or will be installed or modified in order to supply service under the proposed rates.

FPC requests Commission waiver of the 60-day notice requirement in order to allow the contract to become effective as a rate schedule on February 16, 1995. Waiver is appropriate because this filing does not change the rate under these two Commission accepted, existing rate schedules.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Virginia Electric and Power Co.

[Docket No. ER95–610–000]

Take notice that on February 15, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Rainbow Energy Marketing Corporation (REMC) and Virginia Power, dated January 17, 1995 under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to REMC under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric and Power Co.

[Docket No. ER95–611–000]

Take notice that on February 15, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Carolina Power & Light Company and Virginia Power, dated January 19, 1995 under the Power Sales Tariff to Eligible Purchasers dated May 17, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Carolina Power & Light Company under the rates,

terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of Service Schedule B included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. East Texas Electric Cooperative, Inc.

[Docket No. ER95–613–000]

Take notice that on February 15, 1995, East Texas Electric Cooperative, Inc. (ETEC), tendered for filing proposed changes in its Rate Schedule ETEC–1. The proposed changes amend Rate Schedule ETEC–1 by revising the calculations contained in the Pool Commitment Equalization Adjustment (PCEA) to more accurately reflect the cost of power assigned to ETEC by its three members, Sam Rayburn G&T Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc., since sales by ETEC began on April 1, 1994. The change of tariff filing also proposes a two-tiered PCEA adjustment mechanism and the use of a calendar year as the applicable billing period.

ETEC seeks changes to the PCEA charges and credits to conform to current data relating to projected costs and quantities of purchases from ETEC by its three members. The proposed adjustments are intended to govern future PCEA changes as may be necessary. Finally, ETEC seeks to align its billing period to its calendar year budgeting process.

Copies of the filing were served on the public utility's customers, and the Public Utility Commission of Texas.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. CINergy Services, Inc.

[Docket No. ER95–614–000]

Take notice that on February 15, 1995, CINergy Services, Inc. (CINergy), tendered for filing service agreements under CINergy's Non-Firm Point-to-Point Transmission Service Tariff (the Tariff) entered into by: Electric Clearinghouse, Inc., Intercoast Power Marketing Company, Enron Power Marketing, Inc., LG&E Power Marketing, Inc., Louisville Gas and Electric Company, and CINergy Services, Inc.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Western Resources, Inc.

[Docket No. ER95–615–000]

Take notice that on February 16, 1995, Western Resources, Inc. (Western Resources), tendered for filing a contract for the sale of power and energy to The Empire District Electric Company (EDE). Western Resources asks that contract be accepted by the Commission and that first deliveries be permitted on June 1, 1995.

Copies of the filing were served on EDE and the Kansas Corporation Commission.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Power, Inc.

[Docket No. ER95–616–000]

Take notice that on February 16, 1995, Entergy Power, Inc. (Entergy Power), tendered for filing a firm power sale agreement between Entergy Power and Alabama Municipal Electric Authority. Entergy Power requests waiver of the Commission's cost support requirements under Sections 35.12 or 35.13 of the Commission's Regulations, to the extent they are otherwise applicable to this filing.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Northeast Utilities Service Co.

[Docket No. ER95–617–000]

Take notice that on February 16, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Maine Public Service Corporation (MPS) under the NU System Companies System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to MPS.

NUSCO requests that the Service Agreement become effective on February 16, 1995.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Northeast Utilities Service Co.

[Docket No. ER95–618–000]

Take notice that on February 16, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Catex Vitol Electric Incorporated (Catex) under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to Catex.

NUSCO requests that the Service Agreement become effective on February 11, 1995.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Blackstone Valley Electric Co.

[Docket No. ER95–619–000]

Take notice that on February 16, 1995, Blackstone Valley Electric Company, tendered for filing an Additional Facilities Agreement between itself and The Narragansett Electric Company. Narragansett and its affiliate New England Power Company are repowering their Manchester Street generating station located in Providence, Rhode Island. Additional protective equipment must be installed on Blackstone's transmission system at its West Farnum Substation in order to maintain the reliability and stability of Blackstone's transmission facilities when the repowered Manchester Street station re-enters service. The Agreement contains the terms and conditions under which Blackstone will install, operate and maintain that equipment. The additional facilities are expected to come on line on March 31, 1995. The agreement provides that Blackstone will bill Narragansett for a CIAC. Montaup requests waiver of the notice requirement in order to permit the agreement to become effective on February 17, 1995.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5501 Filed 3–6–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 349–030 Alabama]

Alabama Power Co.; Notice of Availability of Draft Environmental Assessment

March 1, 1995.

An environmental assessment (EA) is available for public review. The EA is an application for Non-project Use of Project Land and Water for the Martin Dam Hydroelectric Project. The EA finds that approval of the application would not constitute a major federal action significantly affecting the human environment. The Martin Dam Hydroelectric Project is located on the Tallapoosa River in Elmore County, Alabama.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed at the Commission's Reference and Information Center, Room 3308, 941 North Capitol Street, NE., Washington, DC 20426. Copies can also be obtained by calling the project manager, Jon Cofrancesco at (202) 219–0079.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5499 Filed 3–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 1417 and 1835]

Central Nebraska Public Power and Irrigation District, Nebraska Public Power District; Public Briefing

March 1, 1995.

In response to a request by the U.S. Department of the Interior (Interior), the Commission will host a public briefing on the Memorandum of Agreement for the Central Platte River Basin Endangered Species Recovery Implementation Program (MOA). The briefing is scheduled for April 6, 1995, from 10:00 a.m. until 12:00 noon in the Commission Meeting Room, located on the 9th Floor of 825 N. Capitol St., N.E., Washington, D.C.

Representatives from each of the parties to the MOA, including Interior and the States of Nebraska, Colorado, and Wyoming, will make a presentation on the Platte River Basin and activities under the MOA.

This briefing is neither a hearing nor a settlement conference. It will provide an opportunity for the Commission staff and interested persons to obtain a fuller understanding of the MOA and activities under it.

The briefing will be recorded by a stenographer, and all briefing statements (oral and written) will become part of the Commission's public record of this proceeding. Anyone wishing to receive a copy of the transcript of the briefing may contact Ann Riley & Associates by calling (202) 293–3950, or writing to 1612 K Street, NW, Suite 300, Washington, D.C. 20006.

Anyone wishing to comment in writing on the briefing must do so no later than May 8, 1995. Comments should be addressed to: Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

Reference should be clearly made to: the Kingsley Dam (Project No. 1417) and North Platte/Keystone Diversion Dam (Project No. 1835).

For further information, please contact Frankie Green at (202) 501–7704.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5470 Filed 3–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–209–000, et al.]

Columbia Gas Transmission Corp., et al.; Natural Gas Certificate Filings

February 28, 1995.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corp.

[Docket No. CP95–209–000]

Take notice that on February 21, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia, 25314, filed in Docket No. CP95–209–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to construct and operate certain replacement storage facilities and for permission and approval to abandon the existing segment of storage facilities being replaced, all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia proposes to construct and operate approximately 0.9 mile of 20-inch storage pipeline as a replacement for 0.9 mile of 16-inch storage pipeline, which will be abandoned. Columbia estimates the cost of the proposed construction to be $3,076,000. The segment of storage pipeline to be replaced is designated as Line X–77–F–1, and is located in Grady Storage Field, Pocahontas County, West Virginia.

Columbia does not request authorization for any new or additional service and states that the replacement line would facilitate on-line pigging in an 8.8 mile continuous section of 20-inch pipeline from Glady Compressor Station to a point where the 20-inch pipeline will meet existing 12-inch pipeline in the Glady Storage Field.

Comment date: March 21, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. Trunkline Gas Co.

[Docket No. CP95–222–000]

Take notice that on February 23, 1995, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP95–222–000 a request pursuant to Section 7 of the Natural Gas Act, as amended, and Sections 157.205 and 157.216(b) for authorization to abandon a delivery point located in Newton County, Texas, all as more fully described in the request which is on file with the Commission and open for public inspection.

Specifically, Trunkline proposes to abandon the facilities associated with its delivery point located at the terminus of Trunkline's 3-inch, Line 43A–100, Newton County, Texas (Abstract H.T.&B., A–192). Trunkline proposes to abandon this delivery point which was formerly used to deliver gas to producers for gas-lift operations at the Sabine Tram Field. Trunkline has been notified by S.M.A. Production Company, the current customer, that the delivery point is no longer required and can therefore be abandoned. Trunkline proposes to abandon the delivery point by removing the above-ground measurement facilities from the delivery point site for future use. Trunkline states that the facilities are not used for any other transportation agreements.

Comment date: April 14, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Eastern Transmission Corp.

[Docket No. CP95–223–000]

Take notice that on February 23, 1995, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston Texas 77056–5310, filed a request with the Commission in Docket No. CP95–223–000 pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to install an additional meter tube, authorized in blanket certificate issued in Docket No. CP82–535–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Eastern proposes to install an additional 12-inch meter tube at its existing Meter Station No. 128 (M&R 128) located on Texas Eastern's 30-inch Line No. 20 at Mile Post 42.94 in Union

County, New Jersey. Texas Eastern states that the proposed tube will increase the maximum delivery capacity of M&R 128 by up to 70,000 dekatherms per day of natural gas deliveries to Public Service Electric and Gas Company (PSE&G), an existing customer. Texas Eastern states that the costs of the proposed meter tube would be $60,000, which Texas Eastern would pay and waive the reimbursement by PSE&G.

Comment date: April 14, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5500 Filed 3–6–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP95–60–001]

Alabama-Tennessee Natural Gas Company; Refund Report

March 1, 1995.

Take notice that Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) on January 10, 1995, tendered for filing with the Federal Energy Regulatory Commission (Commission) a report summarizing refunds disbursed on August 8, 1994, pursuant to the Commission-approved settlement in Docket No. RP92–237, *et al.* Alabama-Tennessee states that the refunds were disbursed by means of a credit to each customer's respective OBA imbalance amount existing at the time of the credit.

All parties that have already filed comments or protests regarding the subject refund need not file in response to this notice.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before March 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5471 Filed 3–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95-24-000]

Colorado Interstate Gas Company; Filing of Refund Report

March 1, 1995.

Take notice that on February 24, 1995, Colorado Interstate Gas Company (CIG), filed a refund report in Docket Nos. GP83–11, RI 83–9, et al. CIG states that the filing and refunds were made to comply with the Federal Energy Regulatory Commission's (Commission) Orders or December 1, 1993 and May 19, 1994. CIG states that these amounts were paid by CIG on December 14, 1994.

CIG states that the refund report summarizes the Kansas ad valorem tax refund amounts related to tax bills rendered for production on or after June 28, 1988 pursuant to the Commission's December 1, 1993 and May 19, 1994 Orders. Lump-sum cash refunds were made by CIG to its former jurisdictional sales customers within 30 days of receipt from the producers. As provided for in the Orders, no additional interest was required to be paid.

CIG states that copies of CIG's filing have been served on CIG's former jurisdictional sales customers, interested state commissions, and all parties to the proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such protests should be filed on or before March 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5469 Filed 3–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–133–004 (Phase I)]

Gas Research Institute; Petition to Continue the Current Funding Mechanism Through 1997

March 1, 1995.

Take notice that on February 27, 1995, Gas Research Institute (GRI), filed a petition requesting expedited approval of its proposal to continue the current funding mechanism for purposes of 1996 and 1997 GRI funding.

GRI proposes that the provisions of the post-1993 funding mechanism,

which has been applicable to GRI's 1994 and 1995 Research and Development (R&D) Programs, be continued through 1997. Under GRI's proposal, the funding surcharge caps previously approved for 1995 would be used for 1996 and 1997 funding, with demand and volumetric caps of 25.5 cents per Dth per month and 1.1 cents per Dth, respectively, allowed to track any increases the Commission may approve in GRI's 1996 and 1997 R&D budgets.

GRI also proposes to add its new pipeline member to the list of pipelines that will be acting as collection agents for GRI funding.

Any person desiring to be heard or to protest GRI's petition should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All protests, motions to intervene and comments should be filed on or before March 15, 1995. All comments and protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5473 Filed 3–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES95–23–000]

MidAmerican Energy Company

March 1, 1995.

Take notice that on February 23, 1995, MidAmerican Energy Company (MidAmerican), filed an application under § 204 of the Federal Power Act seeking authorization to issue securities and assume obligation and liabilities in connection with the proposed merger of Iowa-Illinois Gas and Electric Company (Kowa-Illinois), Midwest Resources Inc. (Midwest Resources) and Midwest Power Systems Inc. (Midwest Power) with and into MidAmerican.

MidAmerican proposes;

- To issue up to 103,784,200 shares of its common stock for the conversion of Midwest Resources common stock and Iowa-Illinois common stock to MidAmerican common stock;
- To issue up to an additional 6,000,000 shares of its common stock for MidAmerican's dividend reinvestment plan;
- To issue up to 3,217,789 shares of its preferred stock for the conversion of Iowa-Illinois preference stock and Midwest Power preferred stock to MidAmerican preferred stock;
- To assume all obligations and liabilities with respect to the existing securities of Iowa-Illinois, Midwest Resources and Midwest Power;
- To assume the outstanding short-term debt limit of $250 million previously granted by the Commission to Midwest Power in Docket No. ES93–35–000 and the new authorization sought by Midwest Power in its application filed with the Commission on February 23, 1995, in Docket No. ES95–22–000 for authorization to issue up to $250 million of promissory notes, pending the Commission's approval; and
- To assume the outstanding short-term debt limit of $150 million sought by Iowa-Illinois in Docket No. ES95–20–000 pending the Commission's approval.

MidAmerican requests that the proposed issuance of securities and assumption of obligations and liabilities be exempted from the Commission's competitive bidding and negotiated placement requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 24, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5468 Filed 3–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–175–000]

Mojave Pipeline Company; Rate Filing

March 1, 1995.

Take notice that on February 27, 1995, Mojave Pipeline Company (Mojave), tendered for filing a notice of rate filing concerning Tariff, First Revised Volume No. 1. Mojave is tendering revised tariff sheets for filing and acceptance to become effective March 1, 1995.

Mojave states that based upon test period data, Mojave projects an annual revenue deficiency in excess of $6 million under its currently effective rates as a result of actual increases in its cost of service. Notwithstanding such prospective revenue deficiency, Mojave does not propose to increase the level of its currently effective rates, nor does it propose to modify the rate design underlying such rates established in Mojave's Order No. 636 restructuring proceeding. Rather, Mojave's rate filing proposes to continue the effectiveness of its current rates and rate design, and thus to recover the same level of revenues it is allowed to collect under its currently effective tariff.

Mojave is proposing to modify the currently effective crediting mechanism for revenues derived from interruptible transportation established in Mojave's Order No. 636 restructuring proceeding. Under such mechanism, ninety percent of the amounts in excess of Mojave's $0.0010 Minimum Interruptible Rate collected from Mojave's interruptible shippers under Rate Schedule IT–1 are credited to Mojave's firm shippers in proportion to their respective firm contract quantities, while the remaining ten percent (10%) of such amounts are retained by mojave.

Mojave proposes to eliminate this crediting mechanism in light of the minimal revenues from interruptible service experienced during the base period, and Mojave's inability to project interruptible revenues.

Mojave states that copies of the notice were served upon all of Mojave's firm and interruptible transportation customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Parts 385.214 and 351.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5467 Filed 3–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1614–000]

Southern Company Services, Inc.; Filing

March 1, 1995.

Take notice that on February 1, 1995, Southern Company Services, Inc., tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5466 Filed 3–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–174–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 1, 1995.

Take notice that on February 27, 1995, Texas Eastern Transmission Corporation (Texas Eastern), tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of April 1, 1995:

Second Revised Sheet No. 139
Second Revised Sheet No. 140
Second Revised Sheet No. 141
Second Revised Sheet No. 142
Second Revised Sheet Nos. 143–155

Texas Eastern states that the filing is submitted pursuant to Section 15.2(G), Transition Cost Tracker, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, pursuant to Order No. 528, *et seq.*, and as a limited application pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. Section 717c (1988), and the Rules and Regulations of the Federal Energy Regulatory Commission (''Commission'') promulgated thereunder.

Texas Eastern states that the purpose of the filing is (1) to recover approximately $4.5 million of Order No. 636 transition costs incurred by upstream pipelines and flowed through to Texas Eastern; (2) to recover approximately $163,000 in costs incurred by Texas Gas Transmission Corporation (Texas Gas) and flowed through to Texas Eastern pursuant to Order No. 528, *et seq.*; and (3) to flow through a refund of approximately $119,000 of Order No. 528 costs received by Texas Eastern from Texas Gas pursuant to Texas Gas' settlement in Docket Nos. RP91–100, *et al.*

Texas Eastern states that carrying charges pursuant to Section 154.305 of the Commission's Regulations are included from the date of payment of the costs to the projected date of payment by the customers and also from the date of receipt of the refund by Texas Eastern to the projected date of refund to the customers.

Texas Eastern states that copies of the filing were served on all firm customers of Texas Eastern and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5475 Filed 3–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–9–29–000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

March 1, 1995.

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL), tendered for filing on February 24, 1995 certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, which tariff sheets are enumerated in Appendix A attached to the filing. The proposed effective date of the attached tariff sheets is April 1, 1995.

TGPL states that the instant filing is submitted pursuant to Section 41 of the General Terms and Conditions of TGPL's FERC Gas Tariff which provides that TGPL will file to reflect net changes in the Transmission Electric Power (TEP) rates 30 days prior to each TEP Annual Period beginning April 1. TGPL states that attached in Appendix B to the filing are workpapers supporting the derivation of the revised TEP rates reflected on the tariff sheets included therein.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5474 Filed 3–6–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Efficiency and Renewable Energy

Appliance and Equipment Energy Efficiency Standards: Evaluation Criteria for the Voluntary Program to Provide Energy Efficiency Information for Commercial Office Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Change of Date for Public Meeting and Closing Date for Submission of Comments.

SUMMARY: On February 24, 1995, the Department of Energy published a notice announcing a public meeting to discuss the Evaluation Criteria that will be used as the basis for assessing the voluntary testing and information program to promote energy efficiency in commercial office equipment (60 FR 10379). Because of a request from the Council on Office Products Energy Efficiency, the industry group responsible for the voluntary program, the Department of Energy has rescheduled the public meeting

originally scheduled for Wednesday, March 8, 1995, to Tuesday, March 28, 1995, and extended the close of the comment period for the written comments on the Evaluation Criteria from March 31, 1995, to April 14, 1995. All persons are hereby given notice of the opportunity to submit written comments, and to attend the public meeting.

DATES: Written comments in quadruplicate on the Evaluation Criteria must be received by April 14, 1995. The public meeting will be held on Tuesday, March 28, 1995.

ADDRESSES: Written comments should be labeled ''Voluntary Program to Promote Energy Efficiency in Commercial Office Equipment'' and submitted to Ms. Barbara Twigg, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC. 20585. Telephone: (202) 586–8714; FAX: (202) 586–4617.

The meeting will begin at 10:00 a.m., and will be held at the U.S. Department of Energy, Forrestal Building, Room GH–019, 1000 Independence Avenue, SW., Washington, DC.

Copies of the draft evaluation criteria may be requested from Barbara Twigg at the above address. Copies are available in the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC (202) 586–6020 between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Barbara Twigg, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–431, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8714.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

Issued in Washington, DC, March 1, 1995.

Brian Castelli,

Chief of Staff, Energy Efficiency and Renewable Energy.

[FR Doc. 95–5558 Filed 3–6–95; 8:45 am]

BILLING CODE 6450–01–P

Appliance and Equipment Energy Efficiency Standards: Public Workshop to Discuss the Engineering Analysis for Energy Conservation Standards for Fluorescent Lamp Ballasts

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public workshop.

SUMMARY: The Department will hold a public workshop on Friday, March 3, 1995, to discuss the Engineering Analysis Section of the Draft Technical Support Document in support of the reproposal of fluorescent lamp ballast energy conservation standards. All persons are hereby given notice of the opportunity to submit written comments and to attend the public workshop.

DATES: Five copies of any written comments must be received by March 31, 1995. The public workshop will be held on Friday, March 17, 1995.

ADDRESSES: Please label your written comments as ''Comments on the Fluorescent Lamp Ballast Engineering Analysis'' and submit to Ms. Sandy Cooper, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC. 20585. Telephone: (202) 586–7574; FAX: (202) 586–4617.

The workshop will begin at 9:30 a.m. at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW, Washington, DC.

Copies of transcripts of the April 5–7 the June 7–8, 1994 public hearings for the Eight Products Energy Conservation Standards and the agendas of the December 2, 1994 and the January 17, 1995 public meetings are available in the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC. (202) 586–6020 between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Terry Logee, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–431, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1689.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION:

1. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA), (Pub. L. 94–163) created the Energy Conservation Program for Consumer Products other than Automobiles (Program). The products currently subject to this Program include fluorescent lamp ballasts among others. EPCA sets minimum energy conservation standards for fluorescent lamp ballasts and requires the Department of Energy to revise and increase these standards.

2. Background

On March 4, 1994, the Department proposed standards for room air conditioners, water heaters, direct heating equipment, mobile home furnaces, kitchen ranges and ovens, pool heaters, fluorescent lamp ballasts and television sets. (59 FR 10464). The Department received over 8,000 comments on the proposed rule, including comments from manufacturers, consumers, Members of Congress, retailers, broadcasters, national trade associations, national energy advocates, utilities and other Federal agencies. Based on the comments in the record, the Department determined that revised data from a larger sample of fluorescent lamp ballast types was needed. On December 2, 1994 and on January 17, 1995, the Department held public meetings at the Lawrence Berkeley Laboratory (LBL) in Berkeley, California. The purpose of the meeting was to review the methodology for the fluorescent lamp ballast engineering analysis and to discuss the need for current data on all types of fluorescent lamp ballasts. On January 31, 1995, the Department published notification in the Federal Register of the Department decision to proceed with separate rulemakings for fluorescent lamp ballasts, televisions, and electric water heaters. (60 FR 5880).

3. Discussion

The purpose of the workshop is to discuss the engineering analysis, data sources, the maximum technologically feasible design, and the life-cycle cost analysis for fluorescent lamp ballasts. This workshop will not involve discussion of energy conservation standards for ballasts.

Discussion of the engineering analysis will focus on ballast classes, energy use data (watts input), ballast efficacy factors (BEF), and cost versus ballast efficiency. Ballast classes under discussion will be the one to four lamp F40T12 and F32T8 ballasts, the two

lamp F96 and F96H0 ballasts and the one to four lamp F40T12 ballasts for energy saver lamps. A discussion of the methods, data and data sources for the incremental costs associated with improved ballast efficiency, for ballast life-cycle costs and for payback will be included in this workshop. Workshop participants will discuss the criteria for the ballast with the highest BEF for the maximum technologically feasible design.

The Department has examined many sources of data and has requested and received engineering data from ballast manufacturers and ballast users. However, the Department still has limited engineering data on currently manufactured cathode cut-out magnetic ballasts (e.g., watts, lumens, BEF, total harmonic distortion (THD), Power Factor, etc). Additionally, ballast manufacturers have advised the Department that they could not determine the incremental costs for various improved features in electronic ballasts such as minimum THD, minimum electromagnetic interference maximum power factor, maximum reliability, minimum flicker, maximum lamp life, and good line voltage regulation. The Department has assumed, therefore, that there is no cost difference between levels of electronic ballasts and has used cost data derived from a survey of original equipment maunfacturers and lighting maintenance companies. Anyone having additional cost or price data, contact Mr. Issac Turiel, Lawrence Berkeley Laboratory, Building 90–4000, Berkeley, CA 94720, (510) 486–6493.

4. Public Meeting Procedure

The meeting will be informal. Copies of the engineering analysis are available in the DOE public reading room and will be available at the meeting. Additionally, copies will be mailed to persons who commented on the March 4, 1994, Notice of Proposed Rulemaking for fluorescent lamp ballasts and to anyone who requests a copy by March 10, 1995.

Issued in Washington, DC. February 28, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–5479 Filed 3–6–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[FE Docket No. 95–13–NG]

Canwest Gas Supply U.S.A., Inc.; Order Granting Blanket Authorization to Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting CanWest Gas Supply U.S.A., Inc. blanket authorization to import and export a combined total of up to 400 Bcf of natural gas from and to Canada over a two-year term beginning on the date of the first import or export after February 28, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., February 28, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–5555 Filed 3–6–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–10–NG]

Phibro Division of Salomon, Inc.; Order Granting Blanket Authorization to Import Natural Gas From and Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Phibro Division of Salomon Inc. blanket authorization to import up to 200 Bcf of natural gas from Mexico and to export up to 200 Bcf of natural gas to Mexico over a two-year term beginning on the date of first import or export.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on February 28, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–5554 Filed 3–6–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5167–1]

Public Water System Supervision Program Revision for Commonwealth of Puerto Rico

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commonwealth of Puerto Rico is revising its approved Public Water System Supervision Primacy Program. The Commonwealth of Puerto Rico has adopted drinking water regulations that satisfy the National Primary Drinking Water Regulations for the lead and Copper Rule (LCR). USEPA regulations were promulgated on June 7, 1991 (56 FR 26460). The USEPA has determined that Puerto Rico Lead and Copper regulations are no less stringent than the corresponding Federal regulations and that Puerto Rico continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10.

All interested parties, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the USEPA Regional Administrator at the address shown below within thirty (30) days after the date of this Federal Register Notice. If a substantial request for a public hearing is made within the required thirty-day period, a public hearing will be held and a notice will be given in the Federal Register and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not choose to hold a hearing on his/her motion, this determination shall become final and effective thirty (30) days after publication of this Federal Register Notice.

Any request for a public hearing shall include the following information:

(1) The name, address and telephone number of the individual organization or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in the Regional

Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing;

(3) The signature of the individual making the requests or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: Requests for Public Hearing shall be addressed to: Carl-Axel P. Soderberg—Director, U.S. Environmental Protection Agency, Caribbean Field Office, Centro Europa Building, 1492 Ponce De Leon Avenue, Suite 417, Santurce, Puerto Rico 00907.

All documents relating to this determination are available for inspection between the hours of 9:00 am and 4:30 pm, Monday through Friday, at the following offices:

Public Water Supply Supervision Program, Puerto Rico Department of Health, Edificio A. Centro Medico, Call Box 70184, San Juan, Puerto Rico 00936

U.S. Environmental Protection Agency, Caribbean Field Office, Centro Europa Building, 1492 Ponce De Leon Avenue, Suite 417, Santurce, Puerto Rico 00907

U.S. Environmental Protection Agency, Region II, Public Water System Supervision Section, Room 853, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

For further information, you may contact: Victor Trinidad, Chief, Water Management Staff, Water Management Staff Caribbean Field Office, U.S. Environmental Protection Agency, Centro Europa Building, 1492 Ponce De Leon Avenue, Suite 417, Santurce, Puerto Rico 00907, (809) 729–6951.

(Section 1413 of the Safe Drinking Water Act, as amended, and 40 CFR 142.10 of the NPDWR)

Dated: February 24, 1995.

William J. Muszynski,

Acting Regional Administrator, EPA, Region II.

[FR Doc. 95–5536 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5166–6]

Common Sense Initiative Council, Iron and Steel Sector Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Common Sense Initiative Council, Iron and Steel Sector Subcommittee—Notice of Meeting.

SUMMARY: The Environmental Protection Agency established the Common Sense Initiative Council (CSIC)—Iron and Steel Sector Subcommittee (CSIC-ISS) on October 17, 1994, to provide independent advice and counsel to EPA on policy issues associated with the iron and steel industry. The charter for CSIC is authorized through October 17, 1996 under regulations established by the Federal Advisory Committee Act (FACA). The Iron and Steel Sector Subcommittee is currently in the process of identifying issues and projects that it will pursue.

OPEN MEETING NOTICE: Notice is hereby given that the Environmental Protection Agency is convening an open meeting of the Iron and Steel Sector Subcommittee on Wednesday, March 22, 1995 from 12:00 noon to 3:00 p.m. at the Ambassador West Hotel, 1300 North State Parkway, Chicago, Illinois 60610, telephone number 312–787–3700. Seating will be available on a first come, first served basis.

The Iron and Steel Subcommittee has created four workgroups which are responsible for proposing to the full Subcommittee for Subcommittee review and approval potential activities or projects that the Iron and Steel Sector Subcommittee will undertake, and for carrying out projects once approved. These workgroups will be meeting on Tuesday preceding the meeting. The purpose of the this meeting will for the four Subcommittee workgroups to report on the progress they have made, and for the Subcommittee to review and discuss the activities or projects recommended by the workgroups, to provide further guidance as necessary, and, as appropriate, to approve projects for which detailed workplans will be subsequently developed.

INSPECTION OF SUBCOMMITTEE DOCUMENTS: Documents relating to the above topics will be publicly available at the meeting. Thereafter, these documents and the minutes of the meeting will be available for public inspection in room 2417M of EPA Headquarters, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: For more information about this meeting, please call either Ms. Mary Byrne at 312–353–2315 in Chicago, Illinois or Ms. Judith Hecht at 202–260–5682 in Washington, D.C.

Dated: February 28, 1995.

Mahesh Podar,

Designated Federal Official.

[FR Doc. 95–5520 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5166–3]

Gulf of Mexico Program Citizens Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting of the Citizens Advisory Committee of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program's Citizens Advisory Committee will hold a meeting at the Sheraton Corpus Christi Bayfront Hotel, N. Shoreline Blvd., Corpus Christi, Texas.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas Lipka, Acting Director, Gulf of Mexico Program Office, Building 1103, Room 202, John C. Stennis Space Center, Stennis Space Center, MS 39529–6000, at (601) 688–3726.

SUPPLEMENTARY INFORMATION: A meeting of the Citizens Advisory Committee of the Gulf of Mexico Program will be held March 29–31, 1995, at the Sheraton Corpus Christi Bayfront Hotel, N. Shoreline Blvd., Corpus Christi, Texas. The committee will meet from 3:00 to 6:00 p.m. on March 29, 8:00 a.m. to 7:30 p.m. on March 30, and 8:00 a.m. to 5:30 p.m. on March 31. Agenda items will include: (March 29) Describe Review and Evaluation Process for GMP Symposia; Develop Evaluation Form to Insure Consistency Among Reviewers; Receive Reports from Session Evaluations; Analyze and Critique Evaluation Form; and Assign Members to Specific Sessions for Evaluation. (March 30) Assign Members to Specific Sessions for Evaluations; Receive and Compile Reports from Session Evaluations; and Prepare Preliminary Report. (March 31) Assign Members to Specific Sessions for Evaluations; Complete Critique of Symposium; Receive Status Report on Key Committee Initiatives, Activities and Issues; Develop a Five Year Citizens Advisory Committee Plan; Receive Report on Gulf of Mexico Foundation; Develop a CAC Challenge for Next Six Months; Amend Bylaws Concerning Quorum; and Elect CAC Officers. The meeting is open to the public.

Frederick Kopfler,

Acting Director, Gulf of Mexico Program.

[FR Doc. 95–5518 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5165–7]

Notice of Meetings, Open to the Public, of the Multi-Agency Radiation Site Investigation Manual Development Working Group

AGENCY: Environmental Protection Agency, lead.

ACTION: Meetings open to the public.

SUMMARY: The Environmental Protection Agency (EPA) is announcing that the Department of Defense, Department of Energy, Environmental Protection Agency, and the Nuclear Regulatory Commission are meeting to develop joint Federal guidance for standardized and consistent approaches to accomplish structural and environmental radiation surveys. Relevant information will be provided to the group by other persons present. The guidance is being developed as a draft document, entitled the ''Multi-Agency Radiation Site Investigation Manual (MARSIM)'', and it is anticipated that the final product will be a consensus document each agency can agree upon and eventually adopt. Meetings of the group are open to the public on a first come, space available basis with advance registration. During the next meeting, representatives of the agencies will discuss: survey planning and design; implications of minimum detectable activity; application of statistics; and the schedule of future meetings.

DATES, ADDRESSES, AND REGISTRATION: A meeting will be held on Tuesday, March 28, 1995 from 9:00 am until about 3:00 pm. The meeting will be held at the U. S. Nuclear Regulatory Commission, 2 White Flint North, Room T–10A1, 11555 Rockville Pike, Rockville, MD. Persons wishing to attend this meeting contact Roberta Gordon at (301) 415–7555 to register. A future meeting is tentatively scheduled for April 27, 1995. The schedule, location, and registration information for future meetings will be posted on the U. S. Nuclear Regulatory Commission Enhanced Participatory Rulemaking on Radiological Criteria for Decommissioning Electronic Bulletin Board, (800) 880–6091; the NRC Public Meeting Announcement System by electronic bulletin board at (800) 952–9676 or by recording at (800) 952–9674; the EPA Cleanup Regulation Electronic Bulletin Board at (800) 700–7837 outside the Washington area and (703) 790–0825 locally; and the RCRA/Superfund Hotline at (800) 424–9346 outside the Washington area, (703) 412–9810 locally, or by TDD at (800) 553–7672.

FOR FURTHER INFORMATION CONTACT: Persons needing further information concerning this group and the work of developing the Multi-Agency Radiation Site Investigation Manual should contact Colleen Petullo, U.S. Environmental Protection Agency/ORIA, PO Box 98517, Las Vegas, NV 89193–8517, (702) 798–2446.

Dated: March 1, 1995.

Nicholas Lailas,

Chief, Radiation Assessment Branch, EPA Office of Radiation and Indoor Air.

[FR Doc. 95–5521 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5166–5]

Modification of General Administrative Compliance Order for Produced Water Discharges Covered by NPDES General Permits for Produced Water and Produced Sand Discharges From the Oil and Gas Extraction Point Source Category to Coastal Waters in Louisiana (LAG290000) and Texas (TXG290000)

AGENCY: Environmental Protection Agency, Region 6.

ACTION: Modification of General Administrative Compliance Order.

SUMMARY: Region 6 of the United States Environmental Protection Agency (EPA) today modifies the General Administrative Compliance Order that was issued January 9, 1995, at 60 FR 2393. This Order is modified to add as respondents to the Order those permittees subject to General NPDES Permit Nos. LAG290000 and TXG290000 who discharge produced water from new Coastal, Stripper or Offshore Subcategory wells to ''coastal '' waters of Texas or Louisiana which will be spudded after the effective date of NPDES permits LAG290000 and TXG290000 and which discharge produced water through existing facilities that are required by this Order to cease produced water discharges no later than January 1, 1997.

DATES: The General Administrative Compliance Order will become effective on March 7, 1995.

ADDRESSES: Notifications required by this Order should be sent to the Water Management Division, Enforcement Branch (6W–EA), EPA Region 6 P.O. Box 50625, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Caldwell, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202; telephone: (214) 665–7513.

SUPPLEMENTARY INFORMATION: The General Administrative Compliance Order being modified today was originally issued January 9, 1995 and published in the Federal Register at 60 FR 2393 with an effective date of February 8, 1995. After the Order was issued, the Region received information that a number of new wells are planned to be drilled in the near future in existing fields in Louisiana and Texas. The discharge of produced water associated with these new wells is not currently covered by the Order. These wells are ones which will discharge their produced water through existing treatment/discharge facilities that are required by the Order to cease discharge of produced water no later than January 1, 1997. Individual wells of this type cannot normally justify a separate injection well for a single production well. If the Order was not modified, it was claimed that oil and gas drilling in coastal Louisiana and Texas would be delayed until the planned injection facilities are in place, which in some cases may be nearly 2 years. The Region has agreed to modify the Order to allow coverage of produced water discharges from those new wells.

Those permittees who have already submitted an ''Administrative Order Notice'' in connection with the General Administrative Compliance Order issued January 9, 1995 do not need to resubmit an Administrative Order Notice to be covered by today's modified Order.

United States Environmental Protection Agency, Region 6 in Re: NPDES Permit Nos. LAG290000 and TXG290000 General Administrative Compliance Order

The following Findings are made and Order issued pursuant to the authority vested in the Administrator of the Environmental Protection Agency (EPA) by Section 309(a)(3) of the Clean Water Act (hereinafter ''the Act''), 33 U.S.C. 1319(a)(3), and duly delegated to the Regional Administrator, Region 6, and duly redelegated to the undersigned Director, Water Management Division, Region 6. Failure to comply with the interim requirements established in this ORDER constitutes a violation of this ORDER and the NPDES permits.

Findings

I

The term ''waters of the United States'' is defined at 40 C.F.R. 122.2. The term ''coastal'' is defined in NPDES Permits LAG290000 and TXG290000 and includes facilities which would be considered ''Onshore'' but for the decision in *API* v. *EPA* 661 F.2 340 (5th Cir. 1981). The term ''existing well''

means a well spudded prior to the effective date of NPDES Permits LAG290000 and TXG290000. The term ''new well'' means a well spudded after the effective date of NPDES Permits LAG290000 and TXG290000 whose associated produced water will be discharged through an existing treatment/discharge facility required by this Order to cease discharge of produced water no later than January 1, 1997.

II

Pursuant to the authority of Section 402(a)(1) of the Act, 33 U.S.C. § 1342, Region 6 issued National Pollutant Discharge Elimination System (NPDES) Permits No. LAG290000 and TXG290000 with an effective date of February 8, 1995. These permits prohibit the discharge of produced water and produced sand derived from Oil and Gas Point Source Category facilities to ''coastal'' waters of Louisiana and Texas in accordance with effluent limitations and other conditions set forth in Parts I and II of these permits. Facilities covered by these permits include those in the Coastal Subcategory (40 CFR 435, Subpart D), the Stripper Subcategory (40 CFR 435, Subpart F) that discharge to ''coastal'' waters of Louisiana and Texas, and the Offshore Subcategory (40 CFR 435, Subpart A) which discharge to ''coastal'' waters of Louisiana and Texas.

III

Respondents herein are permittees subject to General NPDES Permit Nos. LAG290000 and/or TXG290000 and who:

A. Discharge produced water derived from an existing Coastal, Stripper or Offshore Subcategory well or wells to ''coastal'' waters of Texas or Louisiana, or will discharge produced water derived from a new Coastal, Stripper or Offshore Subcategory well or wells to ''coastal'' waters of Texas or Louisiana.

B. Discharge produced water derived from an existing Coastal Subcategory well or wells located in Louisiana or Texas to waters of the United States outside Louisiana or Texas ''coastal'' waters, or will discharge produced water derived from a new Coastal Subcategory well or wells located in Louisiana or Texas to waters of the United States outside Louisiana or Texas ''coastal'' waters.

C. Are required by Permits No. LAG290000 or TXG290000 to meet the requirement of No Discharge of produced water and are taking affirmative steps to meet that requirement.

D. Have submitted an ''Administrative Order Notice''. Such Notices shall be sent to: Enforcement Branch (6W–EA), Region 6, U.S. Environmental Protection Agency, P.O. Box 50625, Dallas, TX 75270. Upon submission of such an Administrative Order Notice, a permittee shall be a Respondent under this General Administrative Order. The terms of each Administrative Order Notice submitted shall be considered terms of this Order and shall be enforceable against the Respondent submitting the Administrative Order Notice. Each Administrative Order Notice must include:

1. Identification of the facility by name and its location (by lease, lease block, field or prospect name), the name and address of its operator, and the name, address and telephone number of a contact person.

2. A certification signed by a person meeting the requirements of Part II, Section D.9 (Signatory Requirements) of Permits LAG290000 and TXG290000 stating that a Compliance Plan has been prepared for the facility in accordance with this Order. A copy of this plan shall not be included with the Administrative Order Notice, but shall be made available to EPA upon request.

3. A Compliance Plan shall include a description of the measures to be taken, along with a schedule, to cease discharge of produced water to waters of the United States as expeditiously as possible.

IV

To maintain oil and gas production and comply with the permits' prohibition on the discharge of produced water, a significant number of Respondents will have to reinject their produced water. A lack of access to the finite number of existing Class II disposal wells, state UIC permit writers, and drilling contractors may cause non-compliance for a significant number of Respondents. In addition, time will be required for some Respondents to reroute produced water collection lines to transport the produced water to injection wells.

V

Respondents may reasonably perform all actions necessary to cease their discharges of produced water no later than January 1, 1997.

VI

For new wells as defined by this ORDER, coverage under this ORDER shall begin immediately after the discharge of the associated produced water begins.

Order

Based on the foregoing Findings, *it is ordered* That Respondents:

A. Fully comply with all conditions of NPDES Permits No. LAG290000 and TXG290000 except for the prohibition on the discharge of produced water and except for the requirement that all discharges of produced water be reported within twenty-four hours.

B. Complete all activities necessary to attain full and continuous compliance with NPDES Permits No. LAG290000 and TXG290000 as soon as possible, but in no case later than January 1, 1997.

C. Operate and maintain all existing pollution control equipment, including existing oil/water separation equipment, in such a manner as to minimize the discharge of pollutants contained in produced water at all times until such time as respondents cease their discharges of produced water.

D. Submit notice to the Water Enforcement Branch of EPA Region 6 when produced water discharges subject to this Order have ceased.

E. Subject to NPDES Permit LAG290000 comply at all times with Part I. Section C.1.b of said permit, requiring that Respondents meet any more stringent requirements contained in Louisiana Water Quality Regulation, LAC: 33,IX,7.708.

Nothing herein shall preclude additional enforcement action.

The effective date of this ORDER shall be March 7, 1995.

Dated: February 24, 1995.

Myron O. Knudson,

Director, Water Management Division (6W).

[FR Doc. 95–5519 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice 23]

Agency Forms Submitted for OMB Review

AGENCY: Export-Import Bank.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980, Eximbank has submitted a proposed collection of information in the form of a survey to the Office of Management and Budget for review.

PURPOSE: The proposed Export-Import Bank Questionnaire of City/State Partners to exporters and banks is to be completed by U.S. banks and exporters familiar with Eximbank's programs as a means of providing an evaluation of the effectiveness, utility, strengths and weaknesses of, and means to improve

upon the relationships established between Eximbank and its 30 City/State Partners.

The collection of the information will enable Eximbank to assess and report to the U.S. Congress the private sector's view of its programs' competitiveness, as required by law.

SUMMARY: The following summarizes the information collection proposal submitted to OMB.

(1) Type of request: New.

(2) Number of forms submitted: One.

(3) Form Number: EIB 95–4.

(4) Title of information collection: Export-Import Bank Questionnaire of City/State Partners.

(5) Frequency of Use: Annual.

(6) Respondents: City/State export finance organizations.

(7) Estimated total number of annual responses: 30.

(8) Estimated total number of hours needed to fill out the form: 15.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed application may be obtained from Tamzen Reitan Agency Clearance Officer, (202) 565–3333. Comments and questions should be directed to Mr. Jeff Hill, Office of Management and Budget, Information and Regulatory Affairs, Room 3235, New Executive Office Building, Washington, DC 20503, (202) 395–3176. All comments should be submitted within two weeks of this notice; if you intend to submit comments but are unable to meet this deadline, please advise by telephone that comments will be submitted late.

Dated: March 1, 1995.

Tamzen C. Reitan,

Agency Clearance Officer.

[FR Doc. 95–5449 Filed 3–6–95; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget (OMB) a request for OMB review of the information collection described below.

Type of Review: Revision of a currently approved collection.

Title: Consolidated Reports of Condition and Income (Insured State Nonmember Commercial and Savings Banks).

Form Number: FFIEC 031, 032, 033, 034.

OMB Number: 3064–0052.

Expiration Date of OMB Clearance: July 31, 1995.

Respondents: Insured State Nonmember Commercial and Savings Banks.

Frequency of Response: Quarterly.

Number of Respondents: 7,011.

Number of Responses per Respondent: 4.

Total Annual Responses: 28,044.

Average Number of Hours per Response: 26.87.

Total Annual Burden Hours: 753,429.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0052, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before March 22, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The FDIC is submitting for OMB review changes to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (call Report) filed quarterly by insured state nonmember commercial and savings banks. The Federal Reserve Board (FRB) and the Office of the Comptroller of the Currency (OCC) are also submitting these changes for OMB review for the banks under their supervision.

The proposed revisions to the Call Report that are the subject of this request have been mandated by the FFIEC and are scheduled to take effect as of March 31, 1995. The proposed changes affect several existing Call Report schedules. Unless otherwise indicated, the Call Report changes apply to all four sets of report forms (FFIEC 031, 032, 033, and 034). Nonetheless, as is customary for Call Report changes, banks will be advised that, for the March 31, 1995, report date, they may provide reasonable estimates for any new or revised item for which the requested information is not readily available. The changes for which OMB approval is requested are summarized as follows:

Deletions and Reductions in Detail

The level of detail with which restructured loans and leases that are in compliance with modified terms are reported in the memoranda section of Schedule RC–C, ''Loans and Lease Financing Receivables,'' would be reduced. For all banks, the current separate items for the various non-real-estate loan categories will be combined into a single item for ''all other loans and all lease financing receivables.'' In addition, banks with foreign offices or with $300 million or more in total assets that file the FFIEC 031 and 032 report forms also will report a single total for their restructured commercial loans to and their restructured leases of non-U.S. addressees.

Call Report items in the seven following areas would be deleted:

(1) Schedule RC–R, item 3, ''Total qualifying capital allowable under the risk-based capital guidelines.''

(2) The quarterly average of ''Obligations (other than securities and leases) of states and political subdivisions in the U.S.'' in Schedule RC–K, item 6.a(6) on the FFIEC 031, item 6.f on the FFIEC 032, and Memorandum item 1 on the FFIEC 033. This average has not been collected from banks with less than $100 million in assets that file the FFIEC 034 report form.

(3) The four components of mandatory convertible debt, net of dedicated stock, in Schedule RC–M, items 7.a through 7.d on the FFIEC 031 and 032, items 6.a through 6.9 on the FFIEC 033, and items 8.a through 8.d on the FFIEC 034. The item for the total amount of mandatory convertible debt, net of dedicated stock, would be retained.

(4) The year-to-day reconcilement of the allocated transfer risk reserve in Schedule RI–B, Part II. This reconcilement has been collected only from banks with foreign offices or with total assets of $300 million or more that file the FFIEC 031 or 032 report forms.

(5) The quarterly reconcilement of the agricultural loan loss deferral account in Schedule RC–M, items 10.a through 10.e. This reconcilement has been collected only from banks with total assets of less than $100 million that file the FFIEC 034 report.

(6) Recoveries of ''Special-Category Loans'' in Schedule RI–B, Part I, Memorandum item 1 on the FFIEC 031

and 032, Memorandum item 3 on the FFIEC 033, and Memorandum item 2 on the FFIEC 034. This item has been collected from national banks only.

(7) The yes-no question on ''Personnel changes among the three senior officers of the bank during the quarter'' in Schedule RC–M, item 6 on the FFIEC 034. This item has been completed only by banks with total assets of less than $100 million that file the FFIEC 034 report form.

New Items

Call Report items in the eight following areas would be added:

(1) Notional Amounts/Par Values of Off-Balanced Sheet Derivatives

At present, all banks report notional amount/par value data for interest rate, foreign exchange rate, and other commodity and equity contracts in items 11 through 13 of Schedule RC–L, ''Off-Balance Sheet Items.'' The existing items will be expanded to separate exchange-traded contracts from over-the-counter contracts and to separate equity derivative contracts from commodity and other contracts. (Spot foreign exchange contracts would also be reported separately.) In addition, for each of the four types of undelying risk exposures (i.e., interest rate, foreign exchange, equity, and commodity and other), the total notional amount/par value of contracts held for trading and held for purposes other than trading will be reported separately, with the latter further divided between contracts that are marked to market for Call Report purposes and those that are not.

(2) Gross Fair Values of Off-Balance Sheet Derivatives

For banks with foreign offices or with $100 million or more in total assets that file the FFIEC 031, 032, or 033 report forms, Schedule RC–L will also be expanded to include gross fair value data for derivatives. (This information will not be collected from small banks that file the FFIEC 034 report forms.) For each of the four types of underlying risk exposures, the gross positive and gross negative fair values will be reported separately for (i) contracts held for trading purposes, (ii) contracts held for purposes other than trading that are marked to market, and (iii) contracts held for purposes other than trading that are not marked to market. When reporting gross fair values, no netting of contracts would be permitted.

(3) Income-Related Information Encompassing Off-Balance Sheet Derivative Activities

Additional memorandum items to Schedule RI, ''Income Statement, '' will be reported by banks with foreign offices or with $100 million or more in total assets that file the FFIEC 031, 032, or 033 report forms. First, banks will provide a breakdown of trading revenue that has been included in the body of the Schedule RI income statement. For each of the four types of underlying risk exposures, banks will report the combined revenue from trading cash and derivative instruments. Second, for derivatives held for purposes other than trading, banks will report the effect that these contracts had on the bank's income as reported in Schedule RI. There will be separate disclosure of (i) the net increase (decrease) to interest income, (ii) the net increase (decrease) to interest expense, and (iii) the effect on noninterest income and expense of these of-balance-sheet derivative contracts.

(4) Risk-Based Capital Reporting changes

For those banks that complete Schedule RC–R in its entirety, the schedule's memorandum section will be revised to provide for the collection of remaining maturity data for long-dated contracts and for four additional types of derivative contracts: gold contracts, other precious metals contracts, other commodity contracts, and equity contracts. The two replacement cost items currently collected for interest rate and foreign exchange rate contracts will be deleted and replaced with a single new item for a bank's current credit exposure across all derivative contracts and counterparties, taking into account legally enforceable bilateral netting agreements that are recognized for risk-based capital purposes.

(5) Investments in ''High-Risk Mortgage Securitiess'' and ''Structured Notes''

Four memorandum items would be added to Schedule RC–B, ''Securities,'' in which banks will separately report the amortized cost and fair value of any ''high-risk mortgage securities'' and of any ''structured notes'' that are held in either the held-to-maturity or available-for-sale portfolios.

(6) Sales of Proprietary Mutual Funds and Annuities

Currently banks are required to report separately the dollar amount of sales during the quarter for money market funds, equity securities funds, debt securities funds, other mutual funds, and annuities in Schedule RC–M, ''Memoranda.'' The five existing mutual fund and annuity items combine sales of proprietary, private label, and third party products. The banking agencies would add one item to Schedule RC–M in which banks will report separately the total sales during the quarter of proprietary mutual funds and annuities.

(7) Reporting of Reciprocal Demand Balances for Insurance Assessment Purposes

The banking agencies would add new items to Schedule RC–O, ''Other Data for Deposit Insurance Assessments,'' in order to separately identify the amount of the following three types of adjustments to a bank's reported demand deposits that are related to reciprocal demand balances and are needed for deposit insurance assessment purposes: (i) Amount by which demand deposits would be reduced if reciprocal demand balances between the reporting bank and savings associations were reported on a net basis rather than a gross basis in Schedule RC–E, (ii) Amount by which demand deposits would be increased if reciprocal demand balances between the reporting bank and U.S. branches and agencies of foreign banks were reported on a gross basis rather than a net basis in Schedule RC–E, and (iii) Amount by which demand deposits would be reduced if cash items in process of collection were included in the calculation of net reciprocal demand balances between the reporting bank and U.S. banks and savings associations in Schedule RC–E.

(8) Disclosure of the Acquisition Date When Push Down Accounting Has Been Applied

Push down accounting is the establishment of a new accounting basis for a bank in its separate financial statements (including its Call Report) as a result of a substantive change in control. The banking agencies would add an item to the Memoranda section of Schedule RI, ''Income Statement,'' to reveal the date when any such transactions have taken place.

Instructional Changes

The Call Report instructions will be updated in certain places to incorporate references to FASB Statement No. 114, ''Accounting by Creditors for Impairment of a Loan.'' Statement No. 114 defines impairment and sets forth measurement methods for estimating the portion of the total allowance for loan and lease losses attributable to impaired loans. The banking agencies also propose instructional changes relating to the reporting of mortgage-

backed securities in the body of Schedule RC–B, ''Securities,'' so that item 4 of Schedule RC–B will include all mortgage-backed securities. In addition, the Call Report instructions will be clarified in response to questions about the reporting of lines of credit extended to bank insiders, participations in pools of residential mortgages, refundable loan commitment fees, and stock subscription payments.

Dated: March 1, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–5438 Filed 3–6–95; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–0806]

Policy Statement on Payments System Risk; Daylight Overdraft Pricing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement.

SUMMARY: The Board has approved a modification of the increase in the fee charged to depository institutions for daylight overdrafts incurred in their accounts at the Reserve Banks that had been scheduled to take effect on April 13, 1995. As a result of the sizeable reductions in daylight overdrafts already achieved, as well as concerns about the possible effects of further rapid fee increases, the Board has approved an increase in the daylight overdraft fee to an effective daily rate of 15 basis points rather than 20 basis points. (The 15-basis-point fee equals an annual rate of 36 basis points, quoted on the basis of a 360-day year and a 24-hour day.) The Board will evaluate the desirability of any further increases in the daylight overdraft fee, based on the objectives of the payments system risk program, two years after the implementation of the 15-basis-point fee. Any changes in the fee resulting from that review will be announced with a reasonable lead-time for implementation.

EFFECTIVE DATE: April 13, 1995.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Marquardt, Assistant Director (202/452–2360) or Paul Bettge, Manager (202/452–3174), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System. For the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

I. Background on the Daylight Overdraft Fee Policy

The Board's initial policy statement aimed at controlling daylight overdrafts, which became effective in 1986 (50 FR 21120, May 22, 1985), encouraged depository institutions to establish voluntary daylight overdraft limits, or caps, across all large-value payment systems. The cap levels were subsequently reduced by the Board, effective in 1988, in an effort to reduce further the level of overdrafts (52 FR 29255, August 6, 1987).

While daylight overdrafts associated with funds transfers appeared to stabilize somewhat after the introduction of caps, daylight overdrafts associated with securities transfers, which were exempt from the original caps, continued to grow strongly. The Board became concerned, however, that further reductions in cap levels might seriously disrupt long-established market practices for settling financial transactions. Thus, in 1987, the Board commissioned two studies of the fundamental issues concerning payments system risk by a staff task force and an industry advisory group. Both groups agreed that the Federal Reserve's provision of free daylight overdraft credit was a subsidy that encouraged the overuse of such credit by private institutions. The advisory group emphasized the flexibility of daylight overdraft fees as a market-oriented means of allocating daylight credit to depository institutions that valued it most highly, while allowing them to determine the least costly means of reducing these overdrafts.

The task force identified the following set of public policy objectives for the Board's daylight overdraft program:

- Low direct credit risk to the Federal Reserve,
- Low direct credit risk to the private sector,
- Low systemic risk,
- Rapid final payments,
- Low operating expense of making payments,
- Equitable treatment of all service providers and users in the payments system,
- Effective tools for implementing monetary policy, and
- Low transaction costs in the Treasury securities market.

The task force recognized that the pursuit of these objectives might, at times, result in competing policy goals, and that policy options would need to be evaluated on the basis of whether they achieved an appropriate balance of the objectives. In particular, a policy might need to balance considerations of direct risks to the Federal Reserve, on the one hand, and systemic risks on the other.

After completion of the two studies, the Board sought public comment on the issues associated with charging fees for daylight overdrafts, along with a number of other issues relating to its payments system risk program. The Board abolished cross-system net debit caps, but retained caps on overdrafts in Federal Reserve accounts, effective in 1991 (55 FR 22087, May 31, 1990). In 1992, the Board announced its intention to charge fees for daylight overdrafts (57 FR 47084, October 14, 1992). The Board also announced that the fee would be phased in so the Board could monitor the impact of the fee and make adjustments, if necessary.

The current effective daily fee of 10 basis points was implemented on April 14, 1994. Under the policy adopted in 1992, the fee is scheduled to increase to 20 basis points on April 13, 1995, and to 25 basis points on April 11, 1996. (The annual rate charged for daylight overdrafts is quoted on the basis of a 360-day year and a 24-hour day. The annual rates are officially quoted as 24, 48, and 60 basis points. The annual rate is converted to an effective daily rate by multiplying it by the fraction of the day that the Fedwire funds transfer system operates, currently 10 hours out of 24. This document will refer to the effective daily rates, because they are commonly used in public discussions of the daylight overdraft fee.)

II. Impact of the Initial Daylight Overdraft Fee

In the aggregate, daylight overdrafts in Federal Reserve accounts have fallen by roughly 40 percent in response to the initial 10-basis-point fee. Significant reductions in overdrafts occurred immediately upon implementation of fees, and the resulting levels of overdrafts have remained fairly constant since that time. Peak overdrafts, defined as the maximum aggregate daylight overdraft at the end of each minute during an operating day, have fallen from $124 billion, on average, during the six months before implementation of fees, to $70 billion, on average, from April 14 through the last reserve maintenance period in 1994. Over the same period, aggregate per-minute average overdrafts, the base measure upon which fees are assessed, dropped from $70 billion to $43 billion. These figures represent reductions of 43 percent and 39 percent respectively, in aggregate peak and per-minute average overdrafts.

The reduction in overdrafts has been concentrated among a few institutions. For the six institutions with the largest daylight overdrafts (per-minute average overdrafts since April 14, 1994, of at least $1 billion), average overdrafts have fallen by $25 billion overall, or 48 percent. This decline represents 97 percent of the total reduction in per-minute average overdrafts. In contrast, 44 institutions with overdrafts between $100 million and $1 billion had increased overdrafts, on average, with the implementation of fees. Thus, daylight overdraft fees appear to have resulted in a reduction in daylight overdrafts in the aggregate, as well as a reallocation of daylight overdrafts among institutions.

A large portion of the reduction in overdraft levels observed since April has been related to securities-transfer activity on Fedwire. Average securities-related daylight overdrafts in Federal Reserve accounts have decreased by 47 percent since implementation of daylight overdraft fees. By contrast, average Fedwire-funds-related and non-Fedwire-related daylight overdrafts combined have decreased by 26 percent.

III. Impact on the Financial Markets

Government Securities Market

The significant reduction in overdrafts related to securities-transfer activity is due primarily to changes in settlement patterns in the government securities market, in particular the overnight repurchase agreement (RP) market, and to the concentration of government securities clearing services among a few institutions—the securities clearing banks. Typically, securities dealers finance their inventories of government securities through overnight RPs with institutional investors, who exchange cash for securities and hold the securities overnight in accounts at custodian depository institutions. These securities are usually returned on Fedwire to the dealers' clearing banks by the custodian banks at the opening of business. Because funds are simultaneously debited from the clearing banks' accounts when the securities are transferred on Fedwire, substantial overdrafts are created in the clearing banks' accounts at the Federal Reserve. Overdrafts persist until new RPs are arranged and settled by deliveries of securities out of accounts at the securities clearing banks later in the day. Before implementation of daylight overdraft fees, these overdrafts typically reached a peak at around 11:00 a.m. ET.

The concentration of RP clearing activity at the securities clearing banks, along with the substantial associated daylight overdrafts, led these institutions to expect sizeable daylight overdraft charges. As a result, they developed automated systems to allocate daylight overdraft charges to the customers whose RP activity generated the overdrafts. Thus, strong incentives were created for securities dealers to modify RP trading and settlement practices in order to minimize charges assessed by the clearing banks.

Since the implementation of daylight overdraft fees, securities dealers have accelerated the morning practice of arranging RPs, as well as the identification and pricing of the related RP securities. This practice has significantly improved the speed with which securities are delivered to RP counterparties, thereby shifting funds back to the clearing banks earlier in the day and reducing their average overdrafts at the Reserve Banks. In the aggregate, securities-related overdrafts now reach their maximum much earlier in the morning, at roughly 9:30 a.m. ET, and the largest overdrafts persist for a shorter time.

The decrease in securities-related daylight overdrafts may also be attributable, in part, to an increase in tri-party repurchase agreement activity. In a tri-party RP, both parties hold securities through a common securities custodian, and the transfer of RP securities is executed on the books of the custodian rather than on Fedwire. Tri-party RPs may reduce daylight overdrafts if funds are also maintained at the custodian institution and not returned to investors on Fedwire during the day. Although no statistics are available on tri-party RP volume, major institutions have reported a large increase in tri-party RPs as a result of daylight overdraft fees. It should be noted, however, that steady growth in tri-party volume had been reported even before implementation of fees.

Other Markets and Transactions

Daylight overdrafts related to Fedwire funds transfers are more widely dispersed across depository institutions, are generated by settlement practices associated with a variety of market activities, and are characterized by a much different intraday pattern than those related to securities transfers. The largest aggregate funds-related overdrafts occur between the hours of 12:30 p.m. and 4:30 p.m. ET, with the intraday peak generally occurring at around 2:30 p.m. This period corresponds to the current settlement timing conventions, or ''window,'' for federal funds contracts in which overnight borrowings are repaid in the morning and the proceeds from new contracts are received in the afternoon. In addition, it is during the mid-afternoon period that other payment systems, such as securities depositories, impose the greatest settlement funding requirements on their members, further contributing to funds-related overdrafts in accounts at Reserve Banks.

Because funds-related overdrafts and associated daylight overdraft charges are widely dispersed among institutions, the incentives to change market conventions or risk disrupting customer relationships are much smaller in the funds markets than in the securities markets.[1] As a result, the intraday patterns of settlements that use the Fedwire funds transfer service as well as funds-related overdrafts have remained largely unchanged. Further, the aggregate level of funds-related overdrafts has been reduced only moderately.

When the Board adopted the daylight overdraft fee policy in 1992, it identified a number of measures that institutions might take to reduce funds-related overdrafts. These included delays of less time-critical funds transfers, a shift of funds transfer activity from Fedwire to CHIPS, increased netting of funding contracts, the development of an intraday funds market, and the use of time-specific deliveries of funds.

So far, these potential responses appear to have been implemented only to a limited degree. First, only four to five percent of daily Fedwire funds transfer value has shifted from before noon to later in the day, with a negligible impact on transfer volume. Second, discussions with market participants indicate that few institutions have shifted payments from Fedwire to CHIPS. Third, anecdotal evidence suggests that institutions have increased somewhat their use of netting for overnight federal funds contracts, yet it is unclear whether the increase is the result of daylight overdraft fees or other developments in the funds markets. Anecdotal evidence also suggests that institutions have increased their use of term federal funds contracts, although market participants suggest this increase may be related more to interest rate developments than to daylight overdraft fees. Finally, neither an intraday market nor a significant increase in the time-specific delivery of funds has materialized since the implementation of daylight overdraft fees.

[1] One exception is a procedural change implemented in response to daylight overdraft fees by the Participants Trust Company to permit partial disbursement of principal and interest payments on securities held at the depository to its participants earlier in the day.

IV. Fee Options Considered by the Board

In keeping with its policy of monitoring the impact of the fee during the phase-in period and adjusting it, if necessary, the Board considered three options for the next phase of the daylight overdraft fee: increase the fee to 20 basis points as scheduled, leave the fee at 10 basis points, or increase the fee to an intermediate level of 15 basis points for at least two years.

Increase the Fee to 20 Basis Points as Announced

By most accounts, the implementation of the initial daylight overdraft fee has been a success. The 10-basis-point fee dramatically reduced the aggregate amount of daylight credit provided by the Federal Reserve, along with the associated direct credit risk, with little disruption in the financial sector. The fact that such a large reduction in overdrafts was possible as a result of a small fee suggests that the economic inefficiencies created by the provision of free daylight credit were substantial. The Board believes that a further increase in the fee will tend to reduce or eliminate any remaining subsidies associated with Federal Reserve daylight credit and reduce inefficiencies in the use of such credit.

The Board considered that implementation of the previously announced increase in the fee to 20 basis points might prompt institutions to take additional steps to improve payment practices and reduce the use of daylight credit along with associated credit risks. The Board also believes, however, that an increase in the fee to 20 basis points at this time could increase the probability of undesirable market effects contrary to the objectives of the Board's risk-control program.

Perhaps the overriding concern is the potential for increases in systemic risk. The Board believes that systemic risk could increase if the higher fee were to induce a significant shift of payment activity from Fedwire, where transfers are immediately final and credit risk is absorbed and controlled by the central bank, to private systems, where payments are often provisional, risks are less transparent, and, in some cases, risks may not be fully controlled.

A significant shift in transfer volume from Fedwire to CHIPS, for example, would be more likely to occur with a higher fee. Such a shift could increase systemic risk somewhat even though elaborate risk controls have been installed on CHIPS. The extent to which funds transfer volume would shift from Fedwire to CHIPS, however, is uncertain. CHIPS has historically been used primarily to settle international transactions, yet CHIPS participants might begin to use CHIPS routinely for domestic as well as international funds transfers. In the longer term, CHIPS potentially could attract additional members and significantly increase the scale of its domestic funds transfer activities.

Industry participants have also suggested that the automated clearing house (ACH) system, typically associated with small-dollar transfers, could be used to make large-dollar payments traditionally made on Fedwire. Such a shift could increase systemic risk, because credit transfers made through ACH systems are provisional payments and real-time risk controls may be difficult to implement. Anecdotal evidence suggests that, so far, there has been a small increase in the use of the ACH system for large-dollar payments.

There is also an increased likelihood that a higher daylight overdraft fee could prompt a shift in securities transfer activity from Fedwire to private securities depositories and the securities clearing banks. For example, in 1994 the Participants Trust Company (PTC) announced an initiative to make certain mortgage-backed federal agency securities eligible for its system. Also in 1994, the Depository Trust Company (DTC) issued a study of the feasibility of expanding its services to include U.S. government and federal agency securities, including mortgage-backed securities, in its same-day funds settlement securities system. In addition, the securities clearing banks might seek the custodial business of large institutional investors, who tend to hold large intraday funds balances, in order to increase tri-party RP volume and reduce daylight overdraft charges. The result of these potential developments could be an increased concentration of collateral, clearing, and deposit risks at private securities depositories and the clearing banks.

The probability that funds and securities transfer activity would move off Fedwire is influenced by both cost and risk considerations. CHIPS, PTC and DTC incorporate net debit caps and collateralization requirements as part of their risk management systems. As a result, participants in these systems would have to weigh the costs of posting additional collateral to support additional payment activity against the costs of incurring daylight overdrafts in Federal Reserve accounts, as well as other factors such as settlement speed and finality. In the case of tri-party RPs, the large institutional RP counterparties are likely to be aware of the custodial risks in tri-party RPs and might demand a higher return for tri-party RPs as a result. If so, the premium for these tri-party RPs might be more costly to dealers than daylight overdraft charges.

In addition to possible increases in systemic risk, a higher daylight overdraft fee could cause further delays in Fedwire funds transfers.[2] Furthermore, if payment volume moves to later in the day, there is less time available for institutions to recover from unforeseen operational problems and meet settlement obligations by the end of the banking day. As noted earlier, however, there has been only a modest shift in payments to later in the day with the 10-basis-point fee, and it remains unclear at what level the fee might cause excessive payment delays or disruptions in the financial sector.

The Board also considered the potential for detrimental effects on the government securities market from a 20-basis-point fee. The Public Securities Association (PSA) has stated publicly that all possible low-cost behavioral changes in the government securities markets to reduce overdrafts have already been made. The PSA expects that increases in costs to securities dealers from a higher daylight overdraft fee would ultimately be passed on to the Treasury in the form of higher borrowing costs, without any further reduction in overdrafts.

It should be recognized, however, that the costs incurred so far by the securities dealers have largely been fixed costs to upgrade systems that will not be incurred again. Furthermore, the incremental impact of increased costs that might result from a higher daylight overdraft fee is quite small relative to the tick size in the auctions or secondary market for U.S. Government and federal agency securities. Also, Federal Reserve daylight overdraft charges passed through by the clearing banks to the dealers would ultimately be recouped by the Treasury through the Federal Reserve's payment to the Treasury of its net earnings.

Maintain the Fee at 10 Basis Points

The Board considered maintaining the fee at 10 basis points based on the significant reductions in daylight overdrafts that have already occurred and concerns about undesirable systemic risks that might result from a higher fee. The Board decided that if the fee were not increased, there would be

[2] In the extreme, delays could ultimately result in payment "gridlock" as each institution, in order to avoid daylight overdraft fees, awaits incoming payments before initiating its own payments.

very limited incentives for additional reductions in daylight overdrafts and credit risk. Furthermore, the Board was concerned that the momentum in the financial markets for the serious review and improvement of payment and settlement conventions might be lost if the fee were not increased.

Increase the Fee to 15 Basis Points for at Least Two Years

The Board's decision to increase the fee to 15 rather than 20 basis points was based on three primary considerations. First, as noted above, the response by depository institutions and securities dealers to the 10-basis-point fee has improved RP settlement practices and has reduced significantly the use of Federal Reserve securities-related daylight credit, which before implementation of daylight overdraft fees constituted a large and growing portion of total daylight credit. The strong response in securities markets eases the need for sizeable increases in daylight overdraft fees over the next two years. Instead, a more limited increase to 15 basis points would provide incentives for additional improvements in securities settlements, while limiting increases in daylight overdraft charges borne by securities market participants. The improvements in settlement practices might include the use of time-specific deliveries of RP securities and the greater use of netting contracts between counterparties, where appropriate. Allowing two years before considering additional fee increases will permit sufficient time for the study of other potential changes in market conventions that could help reduce securities-related daylight overdrafts.

Second, the Board believes that an increase in the daylight overdraft fee to 15 basis points will provide additional incentives for participants in funds markets to evaluate and modify payment practices that create daylight overdrafts. As discussed earlier, the responses in funds markets that the Board anticipated when it originally adopted the fee policy have not occurred to a significant degree. The uncertainty about the strength of the market response to daylight overdraft fees at various fee levels was one of the reasons that the Board announced that fees would be phased-in beginning at 10 basis points. The lack of significant response in the funds markets suggests that there is still room for improvements in funding and settlement practices and reductions in daylight overdrafts.

Improvements in funding practices might include the greater use of ''rollovers,'' ''continuing contracts,'' or ''term contracts'' for federal funds transactions, where appropriate. Further, the Payments Risk Committee, a committee of representatives from a selection of large U.S. depository institutions, has suggested that a higher fee may prompt the market to study changes in federal funds and other settlement timing conventions that contribute to a large portion of the aggregate level of daylight overdrafts. Also, a higher fee may prompt institutions to take measures to reduce daylight overdrafts related to customer payment activity.

Third, the Board believes that concerns about systemic risk argue for a more gradual approach to raising daylight overdraft fees. It is important to note that the Board has taken a number of steps to limit systemic risks in the payments system, including adopting policies that apply to private-sector payment networks.[3] Most recently, the Board adopted a revised policy statement on risks in large-dollar multilateral netting systems (59 FR 67534, December 29, 1994). This policy statement applied the Lamfalussy minimum standards for netting arrangements to domestic as well as off-shore multilateral netting systems that clear U.S. dollar payments. At the same time, the Board announced that the staff would continue to study systemic risks in small-dollar payment systems, such as check and ACH clearing systems, as well as the need for any public policy changes in this area.

Thus, at this time, a limited increase in the daylight overdraft fee, particularly an increase to 15 basis points instead of 20 basis points, is likely to create very little incremental systemic risk in private-sector payment systems. In case greater concerns develop regarding systemic risks, the Board retains the option of reducing daylight overdraft fees and taking other appropriate measures to help limit such risks.

The Board believes that the daylight overdraft fee program has been an important part of efforts by both the Board and the private sector over a number of years to reduce risk in the payments system. The fundamental theory of charging fees has been that cost-effective behavioral changes to reduce risks would be taken by depository institutions and their customers if modest fees were charged for daylight credit. Some changes in payment practices have already taken place, and additional changes appear to be possible. Thus, the Board believes a modest increase in the daylight overdraft fee at this time will continue to encourage private-sector efforts to reduce risks and to improve efficiency in the nation's payment and settlement systems.

V. Competitive Impact Analysis

The Board has established procedures for assessing the competitive impact of rule or policy changes that have a substantial impact on payments system participants.[4] Under these procedures, the Board will assess whether a change would have a direct and material adverse effect on the ability of other service providers to compete efficiently with the Federal Reserve in providing similar services due to differing legal powers or constraints, or due to a dominant market position of the Federal Reserve deriving from such differences. If no reasonable modifications would mitigate the adverse competitive effects, the Board will determine whether the anticipated benefits are significant enough to proceed with the change despite the adverse effects.

As noted in the Board's 1992 announcement of the daylight overdraft fee policy, the Board does not believe that imposition of daylight overdraft fees adversely affects the ability of private-sector payments system participants to compete with the Reserve Banks in providing payments services. Private-sector correspondent banks have the ability to charge for intraday credit extended to their customers, either explicitly (as do the Reserve Banks) or implicitly as part of overall service fees. The Board stated in 1992 that private-sector payment systems might benefit from daylight overdraft fees, if the fee caused institutions to shift payments from the Federal Reserve to private systems in order to avoid daylight overdraft fees. Although the shift to private systems might not be as large under a 15-basis-point fee as under a 20-basis-point fee, the Board believes that the lower fee might still produce payment shifts, as discussed in the supplementary information above, as well as a reduced cost burden for private-sector payments system participants.

VI. Administrative Procedure Act

The notice and comment requirements of the Administrative

[3] These policies include those for private large-dollar multilateral netting systems and private delivery-against-payment securities systems (54 FR 26092, 26104, June 21, 1989). In addition, in 1991, the New York Clearing House adopted changes to the CHIPS rules designed to enhance the assurances of settlement through the use of loss sharing and collateral requirements.

[4] These procedures are described in the Board's policy statement ''The Federal Reserve in the Payments System,'' as revised in March 1990. (55 FR 11648, March 29, 1990).

Procedure Act (''APA'') do not apply to matters relating to ''public property, loans, grants, or contracts.'' (5 U.S.C. 553(a)(2)) The daylight overdraft fee relates to ''loans,'' in that the fee is for an extension of intraday credit by Federal Reserve Banks, and ''contracts,'' in that the fee is part of an agreement between institutions and the Federal Reserve Banks for the provision of Reserve Bank payment services. Therefore, the APA does not require the Board to seek notice and comment on the fee revision.

Additionally, the Board finds for good cause that notice and comment on the fee revision is unnecessary, in accordance with 5 U.S.C. 553(b)(B). The Board originally adopted a policy, after notice and comment, to implement an annual fee of 48 basis points (equivalent to 20 basis points for a 10-hour Fedwire day) on April 13, 1995. The Board's action today will reduce the previously announced 1995 fee to an annual rate of 36 basis points (equivalent to 15 basis points for a 10-hour Fedwire day.) Because the Board's action reduces burden on affected institutions compared to the previously announced policy, the Board believes that seeking additional comment on this action is unnecessary.

VII. Policy Statement

The Board has adopted the following change in its policy statement that will replace paragraphs two and three of part (I)(B) in its ''Federal Reserve Policy Statement on Payments System Risk'' under headings ''I. Federal Reserve Policy'' and ''B. Pricing'':

The overdraft fee is 36 basis points (annual rate), quoted on the basis of a 24-hour day. To obtain the daily overdraft fee (annual rate) for the standard Fedwire operating day, the quoted 36-basis-point fee is multiplied by the fraction of a 24-hour day during which Fedwire is scheduled to operate. For example, under a 10-hour scheduled Fedwire operating day, the overdraft fee equals 15 basis points (36 basis points multiplied by 10/24). The 36-basis-point fee is effective April 13, 1995.

The 36-basis-point fee (times an operating hour fraction) will be in effect for at least two years. A change in the length of the scheduled Fedwire operating day would not change the effective fee because the fee is applied to average overdrafts which, in turn, would be deflated by the change in the operating day. The Board will evaluate the desirability of an increase in the daylight overdraft fee, based on the objectives of the payments system risk program, two years after the implementation of the 36-basis-point fee. Any changes in the fee resulting from that review will be announced with a reasonable lead-time for implementation.

By order of the Board of Governors of the Federal Reserve System, March 2, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–5530 Filed 3–6–95; 8:45 am]

BILLING CODE 6210–01–P

Brill Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 31, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Brill Bancshares, Inc., Brill, Wisconsin; to become a bank holding company by acquiring 80.11 percent of the voting shares of Brill State Bank, Brill, Wisconsin.

2. First Community Bank Group, Inc., and Todd County Agency, Inc., both of Hopkins, Minnesota; to acquire a total of 100 percent of the voting shares of Citizens State Bank of Barrett, Barrett, Minnesota.

Board of Governors of the Federal Reserve System, March 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–5488 Filed 3–6–95; 8:45 am]

BILLING CODE 6210–01–F

First Farmers Bancshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 21, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Farmers Bancshares, Inc., Portland, Tennessee; to engage *de novo* through its subsidiary Tennessee Business and Industrial Development

Corporation, Chattanooga, Tennessee, in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y, and to make, acquire, and service loans or other extensions of credit related to community development activities, pursuant to § 225.25(b)(1)(iv) of the Board's Regulation Y. The proposed activity will be conducted throughout the state of Tennessee.

Board of Governors of the Federal Reserve System, March 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-5486 Filed 3–6–95; 8:45 am]

BILLING CODE 6210–01–F

First Union Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 21, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Union Corporation, Charlotte, North Carolina; to acquire Coral Gables Fedcorp, Inc., Coral Gables, Florida, and thereby indirectly acquire Coral Gables Federal Savings and Loan Association, Coral Gables, Florida, and engage in acquiring and operating a federal savings bank holding company and its subsidiary savings bank, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. NBD Bancorp, Inc., Detroit, Michigan and NBD Illinois, Inc. Park Ridge, Illinois; to acquire Deerbank Corporation, and thereby indirectly acquire Deerfield Federal Savings and Loan Association, and Northern Illinois Financial Services Corporation, all of Deerfield, Illinois, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y, and making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–5485 Filed 3–6–95; 8:45 am]

BILLING CODE 6210–01–F

John M. Saphir, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 21, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. John M. Saphir, John M. Saphir Living Trust and John M. Saphir Family Partnership, Glenwood, Illinois; each to acquire collectively 17.33 percent of the voting shares of Heritage Community Bancorporation, Inc., Glenwood, Illinois (formerly known as Riverdale Bancorporation, Inc., Riverdale, Illinois), and thereby indirectly acquire Heritage Community Bank, Glenwood, Illinois.

Board of Governors of the Federal Reserve System, March 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–5487 Filed 3–6–95; 8:45 am]

BILLING CODE 6210–01–F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that a two-day meeting of the Federal Accounting Standards Advisory Board will be held on Wednesday afternoon, March 15 from *1:00* to 4:30 and continuing on Thursday, March 16 from 9:00 A.M. to 4:00 in room 7C13 of the General Accounting Office, 441 G St., N.W., Washington, D.C.

The agenda for the meeting includes discussions of issues related to the following projects: Stewardship, Revenue Recognition, Liabilities, and Managerial Cost Accounting Standards.

We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting. Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Executive Staff Director, 750 First St., N.E., Room 1001, Washington, D.C. 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: March 1, 1995.

Ronald S. Young,

Executive Director.

[FR Doc. 95–5465 Filed 3–6–95; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: February, 1995

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: This notice lists new proposals for welfare reform and combined welfare reform/Medicaid demonstration projects submitted to the Department of Health and Human Services for the month of February, 1995. Federal approval for the proposals has been requested pursuant to section 1115 of the Social Security Act. This notice also lists proposals that were previously submitted and are still pending a decision and projects that have been approved since February 1, 1995. The Health Care Financing Administration is publishing a separate notice for Medicaid only demonstration projects.

Comments: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: For specific information or questions on the content of a project contact the State contact listed for that project.

Comments on a proposal or requests for copies of a proposal should be addressed to: Howard Rolston, Administration for Children and Families, 370 L'Enfant Promenade, SW., Aerospace Building, 7th Floor West, Washington DC 20447. Fax: (202) 205–3598, Phone: (202) 401–9220.

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 1115 of the Social Security Act (the Act), the Secretary of Health and Human Services (HHS) may approve research and demonstration project proposals with a broad range of policy objectives.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the Federal Register (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

II. Listing of New and Pending Proposals for the Month of February, 1994

As part of our procedures, we are publishing a monthly notice in the Federal Register of all new and pending proposals. This notice contains proposals for the month of February, 1994.

WAIVER TITLE: Arizona—Employing and Moving People Off Welfare and Encouraging Responsibility Program

DESCRIPTION: Would not increase benefits for additional children conceived while receiving AFDC; limit benefits to adults to 24 months in any 60 month period; allow recipients to deposit up to $200/month (with 50% disregarded) in Individual Development Accounts; require minor mothers to live with parents; extend Transitional Child Care and Medicaid to 24 months and eliminate the 100-hour rule for AFDC-U cases. Also, in a pilot site, would provide individuals with short-term subsidized public or private OJT subsidized by grant diversion which includes cashing-out Food Stamps

DATE RECEIVED: 8/3/94

TYPE: Combined AFDC/Medicaid

CURRENT STATUS: Pending

CONTACT PERSON: Gail A. Parin, (602) 542–4702

WAIVER TITLE: California—Work Pays Demonstration Project (Amendment)

DESCRIPTION: Would amend Work Pays Demonstration Project by adding provisions to: Reduce benefit levels by 10% (but retaining the need level); reduce benefits an additional 15% after 6 months on assistance for cases with an able-bodied adult; time-limit assistance to able-bodied adults to 24 months, and not increase benefits for children conceived while receiving AFDC

DATE RECEIVED: 3/14/94

TYPE: AFDC

CURRENT STATUS: Pending

CONTACT PERSON: Glen Brooks, (916) 657–3291

WAIVER TITLE: California—AFDC and Food Stamp Compatibility Demonstration Project

DESCRIPTION: Would make AFDC and Food Stamp policy more compatible by making AFDC households categorically eligible for Food Stamps; allowing recipients to deduct 40 percent of self-employment income in reporting monthly income; disregarding $100 per quarter in non-recurring gifts and irregular/infrequent income; disregarding undergraduate student assistance and work study income if payments are based on need; reinstating food stamp benefits discontinued for failure to file a monthly report when good cause is found for the failure; and simplifying vehicle valuation methodology

DATE RECEIVED: 5/23/94

TYPE: AFDC

CURRENT STATUS: Pending

CONTACT PERSON: Michael C. Genest, (916) 657–3546

WAIVER TITLE: California—Assistance Payments Demonstration Project (Amendment)

DESCRIPTION: Would amend the Assistance Payments Demonstration Project by: Exempting certain categories of AFDC families from the State's benefit cuts; paying the exempt cases based on grant levels in effect in California on November 1, 1992; and renewing the waiver of the Medicaid maintenance of effort provision at section 1902(c)(1) of the Social Security Act, which was vacated by the Ninth Circuit Court of Appeals in its decision in *Beno* v. *Shalala*

DATE RECEIVED: 8/26/94

TYPE: Combined AFDC/Medicaid

CURRENT STATUS: Pending

CONTACT PERSON: Michael C. Genest, (916) 657–3546

WAIVER TITLE: California—Work Pays Demonstration Project (Amendment)

DESCRIPTION: Would amend the Work Pays Demonstration Project by adding provisions to not increasing AFDC benefits to families for additional children conceived while receiving AFDC

DATE RECEIVED: 11/9/94

TYPE: AFDC

CURRENT STATUS: Pending

CONTACT PERSON: Eloise Anderson, (916) 657–2598

WAIVE TITLE: California—School Attendance Demonstration Project

DESCRIPTION: In San Diego County, require AFDC recipients ages 16–18 to attend school or participate in JOBS
DATE RECEIVED: 12/5/94
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Michael C. Genest (916) 657–3546

WAIVER TITLE: California—Incentive to Self-Sufficiency Demonstration
DESCRIPTION: Statewide, would require 100 hours CWEP participation per month for JOBS mandatory individuals who have received AFDC for 22 of the last 24 months and are working fewer than 15 hours per week after two years from JOBS assessment and: have failed to comply with JOBS without good cause, have completed CWEP or are in CWEP less than 100 hours per month, or have completed or had an opportunity to complete post-assessment education and training; provide Transitional Child Care and Transitional Medicaid to families who become ineligible for AFDC due to increased assets or income resulting from marriage or the reuniting of spouses; increase the duration of sanctions for certain acts of fraud
DATE RECEIVED: 12/28/94
TYPE: Combined AFDC/Medicaid
CURRENT STATUS: Pending
CONTACT PERSON: Michael C. Genest (916) 657–3546

WAIVER TITLE: Delaware: A Better Chance
DESCRIPTION: Statewide, would implement a two-part demonstration. The Welfare Reform Project (WRP), operating from 10/95–6/99, would include: A 2-year limit on cash benefits for cases with able-bodied adults; educational and employment services based on adult's age; in limited cases benefits up to two additional years provided under pay-for-performance workfare program; non-time-limited benefits for unemployable cases; self-sufficiency contract requirements; education and employment-related sanctions to be 1/3 reduction in AFDC and Food Stamp benefits for first offense, 2/3 reduction for second, and loss of Food Stamp benefits until compliance and permanent AFDC loss for third; penalty for failure to comply with other contract requirements of $50 the first month, increasing by $50 per month until compliance; full-family sanction for noncooperation with Child Support; no AFDC increase for additional children; no 100-hour and work history rules for AFDC—UP; exempting special education and business accounts up to $5,000; fill-the-gap budgeting using child support and earnings; auto resource limit of $4,500; $50 bonus to teens who graduate from high school; additional 12 months of transitional child care and Medicaid benefits; no time limit on job search; forward funding of EITC payment; requiring teen parents to live in adult supervised setting, attend school, participate in parenting and family planning education, and immunize children; and providing JOBS services to non-custodial parents. The Family Assistance Plan (FAP), beginning 7/99, would replace the AFDC program and include: Services, but no monetary grant, to children of teen parents; benefits for up to two years under pay-for-performance workfare program; welfare diversion payments and services; forward funding of EITC payment; child care assistance; access to Medicaid Managed Care System; no resource test; direct child support to family; small residual cash benefit program for unemployable cases
DATE RECEIVED: 1/30/95
TYPE: Combined AFDC/Medicaid
CURRENT STATUS: Pending
CONTACT PERSON: Elaine Archangelo, (302) 577–4400

WAIVER TITLE: Georgia—Work for Welfare Project
DESCRIPTION: Work for Welfare Project. In 10 pilot counties would require every non-exempt recipient and non-supporting parent to work up to 20 hours per month in a state, local government, federal agency or nonprofit organization; extends job search; and increases sanctions for JOBS noncompliance. On a statewide basis, would increase the automobile exemption to $4,500 and disregard earned income of children who are full-time students
DATE RECEIVED: 6/30/94
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Nancy Meszaros, (404) 657–3608

WAIVER TITLE: Kansas—Actively Creating Tomorrow for Families Demonstration
DESCRIPTION: Would, after 30 months of participation in JOBS, make adults ineligible for AFDC for 3 years; replace $30 and ⅓ income disregard with continuous 40% disregard; disregard lump sum income and income and resources of children in school; count income and resources of family members who receive SSI; exempt one vehicle without regard for equity value if used to produce income; allow only half AFDC benefit increase for births of a second child to families where the parent is not working and eliminate increase for the birth of any child if families already have at least two children; eliminate 100-hour rule and work history requirements for UP cases; expand AFDC eligibility to pregnant women in 1st and 2nd trimesters; extend Medicaid transitional benefits to 24 months; eliminate various JOBS requirements, including those related to target groups, participation rate of UP cases and the 20-hour work requirement limit for parents with children under 6; require school attendance; require minors in AFDC and NPA Food Stamps cases to live with a guardian; make work requirements and penalties in the AFDC and Food Stamp programs more uniform; and increase sanctions for not cooperating with child support enforcement activities
DATE RECEIVED: 7/26/94
TYPE: Combined AFDC/Medicaid
CURRENT STATUS: Pending
CONTACT PERSON: Faith Spencer, (913) 296–0775

WAIVER TITLE: Maine—Project Opportunity
DESCRIPTION: Increase participation in Work Supplementation to 18 months; use Work Supplementation for any opening; use diverted grant funds for vouchers for education, training or support services; and extend transitional Medicaid and child care to 24 months
DATE RECEIVED: 8/5/94
TYPE: Combined AFDC/Medicaid
CURRENT STATUS: Pending
CONTACT PERSON: Susan L. Dustin, (207) 287–3106

WELFARE TITLE: Maryland—Welfare Reform Project
DESCRIPTION: Statewide, eliminate increased AFDC benefit for additional children conceived while receiving AFDC and require minor parents to reside with a guardian. In pilot site, require able-bodied recipients to do community service work after 18 months of AFDC receipt; impose full-family sanction on cases where JOBS non-exempt parent fails to comply with JOBS for 9 months; eliminate 100-hour rule and work history requirements for AFDC-UP cases; increase both auto and resource limits to $5000; disregard income of dependent children; provide one-time payment in lieu of ongoing assistance; require teen parents to continue education and attend family health and parenting classes; extend JOBS services to unemployed non-custodial parents; and for work supplementation cases cash-out food stamps

DATE RECEIVED: 3/1/94
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Katherine L. Cook, (410) 333–0700

WAIVER TITLE: Massachusetts—Employment Support Program
DESCRIPTION: Would end cash assistance to most AFDC families, requiring recipients who could not find full-time unsubsidized employment after 60 days of AFDC receipt to do community service and job search to earn a cash ''subsidy'' that would make family income equal to the applicable payment standard; provide direct distribution of child support collections to, and cash-out food stamps for, those who obtain jobs; continue child care for working families as long as they are income-eligible (but requiring sliding scale co-payment); restrict JOBS education and training services to those working at least 25 hours per week; extend transitional Medicaid for a total of 24 months; and require teen parents to live with guardian or in a supportive living arrangement and attend school
DATE RECEIVED: 3/22/94
TYPE: Combined AFDC/Medicaid
CURRENT STATUS: Pending
CONTACT PERSON: Joseph Gallant, (617) 727–9173

WAIVER TITLE: Mississippi—A New Direction Demonstration Program—Amendment
DESCRIPTION: Statewide, would amend previously approved New Direction Demonstration Program by adding provision that a family's benefits would not increase as a result of additional children conceived while receiving AFDC
DATE RECEIVED: 2/17/95
TYPE: AFDC
CURRENT STATUS: New
CONTACT PERSON: Larry Temple, (601) 359–4476

WAIVER TITLE: Missouri—Families Mutual Responsibility Plan
DESCRIPTION: Statewide, Missouri would require JOBS mandatory applicants and recipients to sign a self-sufficiency agreement with a 24-month AFDC time limit to be extended an additional 24 months when necessary. The agreement would allow a resource limit of $5000, an earned income disregard of 50 percent of a family's gross earned income for 12 consecutive months, and standard earned income disregards for remaining earned income. The agreement would require job search and CWEP after the 24 or 48 month limit; and would sanction individuals who do not comply without good cause as well as individuals who re-apply for AFDC if they have completed an agreement entered after July 1, 1997, if they received AFDC benefits for at least 36 months. Further, Missouri would require all minor parent applicants and recipients to live at home or in another adult-supervised setting; disregard parental income of minor parents up to 100 percent of Federal Poverty Guidelines; disregard earnings of minor parents if they are students; provide a alternative to standard filing unit requirements for households with minor parents; eliminate work history and 100-hour rule for two-parent families under 21 yrs old; exclude the value of one automobile; and allow non-custodial parents of AFDC children credit against state child support debt for satisfactorily participating in JOBS
DATE RECEIVED: 1/30/95
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Greg Vadner, (314) 751–3124

WAIVER TITLE: Montana—Achieving Independence for Montanans
DESCRIPTION: Would establish: (1) Job Supplement Program consisting of a set of AFDC-related benefits to assist individuals at risk of becoming dependent upon welfare; (2) AFDC Pathways Program in which all applicants must enter into a Family Investment Contract and adults' benefits would be limited to a maximum of 24 months for single parents and 18 months for AFDC-UP families; and (3) Community Services Program requiring 20 hours per week for individuals who reach the AFDC time limit but have not achieved self-sufficiency. The office culture would also be altered in conjunction with a program offering a variety of components and services; and simplify/unify AFDC and Food Stamp intake/eligibility process by: (1) Eliminating AFDC deprivation requirement and monthly reporting and Food Stamp retrospective budgeting; (2) unifying program requirements; (3) simplifying current income disregard policies. Specific provisions provide for cashing out food stamps, expanding eligibility for two-parent cases, increasing earned income and child care disregards and resource limits, and extending transitional child care
DATE RECEIVED: 4/19/94
TYPE: Combined AFDC/Medicaid
CURRENT STATUS: Pending
CONTACT PERSON: Penny Robbe, (406) 444–1917

WAIVER TITLE: New Hampshire—Earned Income Disregard Demonstration Project
DESCRIPTION: AFDC applicants and recipients would have the first $200 plus 1/2 the remaining earned income disregarded
DATE RECEIVED: 9/20/93
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Avis L. Crane, (603) 271–4255

WAIVER TITLE: New Mexico—Untitled Project
DESCRIPTION: Would increase vehicle asset limit to $4500; disregard earned income of students; develop an AFDC Intentional Program Violation procedure identical to Food Stamps; and allow one individual to sign declaration of citizenship for entire case
DATE RECEIVED: 7/7/94
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Scott Chamberlin, (505) 827–7254

WAIVER TITLE: North Dakota—Training, Education, Employment and Management Project
DESCRIPTION: Would require families to develop a social contract specifying time-limit for becoming self-sufficient; combine AFDC, Food Stamps and LIHEAP into single cash payment with simplified uniform income, expense and resource exclusions; increase income disregards and exempt stepparent's income for six months; increase resource limit to $5000 for one recipient and $8000 for families with two or more recipients; exempt value of one vehicle; eliminate 100-hour rule for AFDC-UP;impose a progressive sanction for non-cooperation in JOBS or with child support; require a minimum of 32 hours of paid employment and non-paid work; require participation in EPSDT; and eliminate child support pass-through
DATE RECEIVED: 9/9/94
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Kevin Iverson, (701) 224–2729

WAIVER TITLE: Ohio—A State of Opportunity Project
DESCRIPTION: Three demonstration components proposed would test provisions which: Divert AFDC and Food Stamp benefits to a wage pool to supplement wages of at least $8/hour; eliminate 100-hour rule for UP cases; provide fill-the-gap budgeting for 12 months from month of employment; increase child support pass-through to

$75; provide a one-time bonus of $150 for paternity establishment; provide an additional 6 months of transitional child care; increase automobile asset limit to $4500 equity value; require regular school attendance by 6 to 19 year olds; continue current LEAP demo waivers (i.e., eliminate many JOBS exemptions and provide incentive payments and sanctions); and disregard JTPA earnings without time limit

DATE RECEIVED: 5/28/94
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Joel Rabb, (614) 466–3196

WAIVER TITLE: Oklahoma—Mutual Agreement, A Plan for Success
DESCRIPTION: Oklahoma Five pilot demonstrations would test provisions which: (1) Eliminate 100-hour rule for UP cases; (2) increase auto asset level to $5000; (3) time-limit AFDC receipt to cases with non-exempt JOBS participants to 36 cumulative months in a 60 month period followed by mandatory workfare program; (4) provide intensive case management; and (5) apply fill-the-gap budgeting
DATE RECEIVED: 2/24/94
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Raymond Haddock, (405) 521–3076

WAIVER TITLE: Oregon—Expansion of the Transitional Child Care Program
DESCRIPTION: Provide transitional child care benefits without regard to months of prior receipt of AFDC and provide benefits for 24 months
DATE RECEIVED: 8/8/94
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Jim Neely, (503) 945–5607

WAIVER TITLE: Oregon—Increased AFDC Motor Vehicle Limit
DESCRIPTION: Would increase automobile asset limit to $9000
DATE RECEIVED: 11/12/93
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Jim Neely, (503) 945–5607

WAIVER TITLE: Pennsylvania—School Attendance Improvement Program
DESCRIPTION: In 7 sites, would require school attendance as condition of eligibility
DATE RECEIVED: 9/12/94
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Patricia H. O'Neal, (717) 787–4081

WAIVER TITLE: Pennsylvania—Savings for Education Program
DESCRIPTION: Statewide, would exempt as resources college savings bonds and funds in savings accounts earmarked for vocational or secondary education and disregard interest income earned from such accounts
DATE RECEIVED: 12/29/94
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Patricia H. O'Neal, (717) 787–4081

WAIVER TITLE: Virginia—Welfare to Work Program
DESCRIPTION: Statewide, would provide one-time diversion payments to qualified applicants in lieu of AFDC; change first time JOBS non-compliance sanction to a fixed period of one month or until compliance and remove the conciliation requirement; require paternity establishment as condition of eligibility; remove good cause for non-cooperation with child support and exclude from AFDC grant caretakers who cannot identify, misidentify, or fail to provide information on the father; require minor parents to live with an adult guardian; require AFDC caretakers without a high school diploma, aged 24 and under, and children, aged 13–18, to attend school; require immunization of children; allow $5000 resource exemption for savings for starting business; and increase eligibility for Transitional and At-Risk Child Care. Also: Require non-exempt participants to sign an Agreement of Personal Responsibility as a condition of eligibility and assign to a work site under CWEP for a number of hours determined by dividing AFDC grant plus the value of the family's Food Stamp benefits by the minimum wage; eliminate increased AFDC benefit for additional children born while a family received AFDC; time-limit AFDC benefits to 24 consecutive months; increase earned income disregards to allow continued eligibility up to the federal poverty level; provide 12 months transitional transportation assistance; modify current JOBS exemption criteria for participants; eliminate the job search limitation; and eliminate the deeming requirement for sponsored aliens when the sponsor receives food stamps. In 12 sites, would operate sub-component paying wages in lieu of AFDC benefits and Food Stamps for CWEP and subsidized employment, increase eligibility for transitional Medicaid; plus other provisions
DATE RECEIVED: 12/2/94
TYPE: Combined AFDC/Medicaid
CURRENT STATUS: Pending
CONTACT PERSON: Larry B. Mason, (804) 692–1900

WAIVER TITLE: Washington—Success Through Employment Program
DESCRIPTION: Statewide, would eliminate the 100-hour rule for AFDC-UP families; impose a 10 percent grant reduction for AFDC recipients who have received assistance for 48 out of 60 months, and impose an additional 10 percent grant reduction for every additional 12 months thereafter, and budget earnings against the original payment standard; and hold the food stamp benefit level constant for cases whose AFDC benefits are reduced due to length of stay on assistance
DATE RECEIVED: 2/1/95
TYPE: AFDC
CURRENT STATUS: New
CONTACT PERSON: Liz Begert Dunbar, (206) 438–8350

III. Listing of Approved Proposals Since February 1, 1995

WAIVER TITLE: Nebraska—Welfare Reform Waiver Demonstration
CONTACT PERSON: Dan Cillessen, (402) 471–9270

IV. Requests for Copies of a Proposal

Requests for copies of an AFDC or combined AFDC/Medicaid proposal should be directed to the Administration for Children and Families (ACF) at the address listed above. Questions concerning the content of a proposal should be directed to the State contact listed for the proposal.

(Catalog of Federal Domestic Assistance Program, No. 93562; Assistance Payments—Research)

Dated: March 1, 1995.

Howard Rolston,

Director, Office of Policy and Evaluation.

[FR Doc. 95–5513 Filed 3–6–95; 8:45 am]

BILLING CODE 4184–01–P

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of March 1995.

Name: Advanced General Dentistry Review Committee.

Date and Time: March 20–22, 1995, 8:30 a.m.

Place: Conference Room J, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on March 20, 8:30 a.m.–9:30 a.m.

Closed for Remainder of Meeting.

Purpose: The Advanced General Dentistry Review Committee shall review applications from public and nonprofit private schools of dentistry or accredited postgraduate dental

training institutions that plan, develop and operate an approved residency program or advanced educational program in the general practice of dentistry, including the support of trainees in such programs who plan to specialize in the practice of general dentistry.

Agenda: The open portion of the meeting will cover welcome and opening remarks, legislative updates, and overview of the review process. The meeting will be closed to the public on March 20, at 9:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Associate Administrator for Policy Coordination, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone requiring information regarding the subject Council should contact Dr. Rosemary E. Duffy, Executive Secretary, Advanced General Dentistry Review Committee, Room 8C–09, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6837.

Agenda Items are subject to change as priorities dictate.

Dated: March 2, 1995.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 95–5559 Filed 3–6–95; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–95–3865; FR–3852–N–02]

Service Coordinator Funds for Fiscal Year 1995; Correction to Identification of NY State Director

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice; Technical correction.

SUMMARY: On February 13, 1995, HUD published a notice that announced the issuance of Housing Notice H–94–99, entitled ''Processing of Requests for Section 8 Funds for Service Coordinators in Section 8 (including Section 515/8 under the Rural Housing and Community Development Service (RHCDS),[1]) and Sections 202, 202/8, 221(d)(3) and 236 Projects and Monitoring of Approved Requests—FY 1995''. Housing Notice H–94–99 describes the procedures for applying for service coordinator funds in FY 1995 and the State or area office's processing of applications and awards for those funds.

The February 13, 1995 notice included a list of Multifamily Division Directors. The purpose of this notice is to correct the name of the director listed for the New York State Office.

SUPPLEMENTARY INFORMATION: On February 13, 1995 (60 FR 8380), HUD published a notice that announced the issuance of Housing Notice H–94–99, entitled ''Processing of Requests for Section 8 Funds for Service Coordinators in Section 8 (including Section 515/8 under the Rural Housing and Community Development Service (RHCDS)), and Sections 202, 202/8, 221(d)(3) and 236 Projects and Monitoring of Approved Requests—FY 1995''. Housing Notice H–94–99 describes the procedures for applying for service coordinator funds in FY 1995 and the State or area office's processing of applications and awards for those funds.

The February 13, 1995 notice included a list of Multifamily Division Directors. The purpose of this notice is to correct the name of the director listed for the New York State Office.

Accordingly, in FR Doc. 95–3473, published February 13, 1995 (60 FR 8280), on page 8280, in column three, the name of the Multifamily Division Director for New York/New Jersey is corrected to read as follows:

New York/New Jersey

New York

Beryl Niewood, Acting Multifamily Director, HUD-New York Office, 26 Federal Plaza, New York, New York 10278–0068, (212) 264–2960.

Dated: February 28, 1995.

Camille Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 95–5456 Filed 3–6–95; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

National Park Service

Creve Coeur Lake Memorial Park Final Supplemental Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Availability of final supplemental environmental impact statement for determination of section 6(f)(3) replacement lands for Creve Coeur Lake Memorial Park (CCLMP), St. Louis County, Missouri.

SUMMARY: The National Park Service (NPS), in compliance with Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* and 4332, as amended, and with Section 6(f)(3) of Title 1 of the Land and Water Conservation Fund Act (L&WCF), 16 U.S.C. 4601–(8)(f), as amended, announces the availability of a final supplemental environmental impact statement (FSEIS) evaluating and selecting additional replacement land for land in CCLMP converted from outdoor recreation use as a result of the Page Avenue Extension. It is determined that a total of 207 acres will be impacted by the proposed ''Red Route'' of significant magnitude to adversely affect present park activities and environment. CCLMP, a county park which has received Federal financial assistance from the L&WCF program, must comply with the requirements of Section 6(f)(3) of the L&WCF Act as it pertains to maintaining outdoor recreation use of all Federally assisted park and recreation areas. This FSEIS is a supplement to the final environmental impact statement (FEIS) for Page Avenue (Route D) extension, St. Louis and St. Charles Counties, Missouri, approved in a Record of Decision on January 6, 1993, by the Federal Highway Administration (FHWA).

The FHWA FEIS addressed construction of a 10-lane elevated extension of Page Avenue across the southern tip of the park site assuming all necessary coordination with other Federal agencies has been satisfactorily accomplished. The NPS on December 11, 1992, adopted the FEIS for use in the environmental evaluation requirements of Section 6(f)(3) of the L&WCF Act.

The initial proposal of 264.78 acres, revised to 258.48 acres and submitted by the State of Missouri to replace the converted 183.4 acres, revised to 207.0 acres, was determined by the NPS as not offering ''reasonably equivalent usefulness'' to the extent necessary to reflect appropriately the loss of this unique natural area. Secretary Babbitt announced on May 18, 1993, in letters to Senators Danforth and Bond, that he did not intend to use his authority under section 6(f)(3) to block the construction of this highway project. He further stated that ''* * * it is necessary to identify a significant amount of additional lands to be included in the mitigation package.''

The FSEIS identifies eight potential alternative land proposals and a ''no action'' alternative for consideration in meeting section 6(f)(3) requirements of the L&WCF Act. Four alternatives were evaluated in detail; three others were eliminated after initial consideration; and one proposed alternative, identified by the Howard Bend Levee District

[1] Previously entitled the Farmers Home Administration (FmHA).

during the draft supplemental environmental impact statement public review period, was evaluated in the FSEIS and determined not to be a significant ''new and reasonable'' alternative nor was it found to meet the necessary section 6(f)(3) replacement requirements.

It is determined by the NPS and State of Missouri that Alternative B (Little Creve Coeur Lake) as the preferred alternative, most closely meets the requirements of significant ''additional land'' for replacement of converted land at CCLMP. This alternative, 464.8 acres declared eligible for section 6(f)(3) consideration, is located to the west and south of Creve Coeur Lake Memorial Park and consists primarily of wetlands presently in agricultural use.

With the adoption of the above preferred alternative, added to the initial replacement package submitted by the State of Missouri, the total land replacement for land converted at CCLMP could amount to 723.28 acres at an estimated value of $3,379,820. The approximate 207 acres of CCLMP land being converted has been valued at $1,755,098.

Copies of the FSEIS may be obtained from the responsible official, Mr. William Schenk, Regional Director (refer to address below). Comments on the FSEIS must be received no later than March 26, 1995 and may be responded to in the Record of Decision.

ADDRESSES: Comments on the FSEIS should be submitted to: Mr. William W. Schenk, Regional Director, Midwest Region, National Park Service, Omaha, Nebraska 68102, 402–221–3432.

Public reading copies of the FSEIS will be available for review at: Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW., Washington, DC 20240, (202) 343–6843.

Dated: February 10, 1995.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 95–5460 Filed 3–6–95; 8:45 am]

BILLING CODE 4310–70–P

Gettysburg National Military Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the fourteenth meeting of the Gettysburg National Military Park Advisory Commission.

MEETING DATE AND TIME: April 20, 1995; 7:00 p.m.–9:00 p.m.

ADDRESSES: Holiday Inn Gettysburg—Battlefield, 516 Baltimore Street, Gettysburg, Pennsylvania 17325.

The Agenda for the meeting will focus on Sub-Committee Reports, the Environmental Impact Statement—deer management, briefing on Gettysburg College land exchange alternative study, recent lands activities and land acquisition issues, and an operational update on park activities.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Advisory Commission, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, PA 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Gettysburg National Military Park located at 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

FOR FURTHER INFORMATION CONTACT: John A. Latschar, Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325, Phone: (717) 334–1124.

Dated: February 22, 1995.

John McKenna,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 95–5461 Filed 3–6–95; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 25, 1995. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, PO Box 37127, Washington, DC 20013–7127. Written comments should be submitted by March 22, 1995.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Baxter County

Davis House, Jct. of Wolf St. and AR 5, SE corner, Norfolk, 95000271

Crittenden County

Marion Colored High School, W of AR 77, Sunset, 95000349

Jefferson County

Saenger Theater, Jct. of W. Second Ave. and Pine St., SE corner, Pine Bluff, 95000348

Madison County

Pettigrew School, N of AR 16, pettigrew, 95000272

Washington County

Washington—Willow Historic District, Roughly, Spring, Dickson, Sutton and Lafayette Sts. from Olive Ave. to Willow Ave., also jct. of Rebecca St. and Willow, Fayetteville, 95000350

CONNECTICUT

Fairfield County

Norwalk City Hall, 41 N. Main St., South Norwalk, Norwalk, 95000282

Hartford County

Department Store Historic District, 884—956 Main St. and 36 Talcott St., Hartford, 95000284

Watkinson Juvenile Asylum and Farm School, 140, 180 and 190 Bloomfield Ave., Hartford, 95000273

New London County

Ames, Winslow, House, 132 Mohegan Ave., New London, 95000283

FLORIDA

Marion County

Ferguson, Robert H., House (Early Residences of Rural Marion County MPS), Off Co. Rd. 326, E of jct. with US 27, Emathla vicinity, 95000288

Randall, T. H., House (Early Residences of Rural Marion County MPS), 11685 NE. Co. Hwy. C–314, Silver Springs vicinity, 95000289

LOUISIANA

Caddo Parish

Kansas City Southern Railroad Bridge, Cross Bayou, Over Cross Bayou at Spring St., Shreveport, 95000347

MICHIGAN

Livingston County

Louk, George, Farm, 1885 tooley Rd., Howell Township, Howell vicinity, 95000285

NEW MEXICO

Mora County

Valmora Sanatorium Historic District, NM 97, 4 mi. E of jct. with Hwy. 161 NE of Watrous, Watrous vicinity, 95000286

NEW YORK

New York County

Zion—St. Mark's Evangelical Lutheran Church, 339–341 E. 84th St., New York, 95000335

Queens County

Flushing Armory (Army National Guard Armories in New York State MPS), 137–158 Northern Blvd., Flushing, 95000270

PUERTO RICO

Sabana Grande Municipality

Hacienda San Francisco, Callejon de la Hacienda, Sabana Grande vicinity, 95000287

SOUTH DAKOTA

Brown County

Firey, John H., House, 418 S. Arch St., Aberdeen, 95000277
Foght—Murdy House, 1403 S. Main St., Aberdeen, 95000276
Lamont, Margaret and Maurice, House, 915 S. Arch St., Aberdeen, 95000281

Clay County

St. Agnes Catholic Church, 202 Washington St., Vermillion, 95000280

Custer County

Historic Trail and Cave Entrance (Jewel Cave National Monument MPS). From old ranger station HS–1 to old cave entrance, Jewel Cave NM, Custer vicinity, 95000337
Pig Tail Bridge (Wind Cave National Park MPS), SD 87 loop over SD 87, N of Norbeck Lake, Wind Cave NP, Hot Springs vicinity, 95000344
Ranger Station (Jewel Cave National Moument MPS), Old administration area, Jewel Cave NM, Custer vicinity, 95000336

Davison County

Mitchell Historic Commercial District (Boundary Increase), Roughly bounded by Duff, Railroad and Lawler Sts., Mitchell, 95000275

Day County

Fiksdal, Lars J., House, 619 W. First St., Webster, 95000279

Hughes County

Goodner, I. W., House, 216 E. Prospect Ave., Pierre, 95000278

TEXAS

Dallas County

Alcalde Street—Crockett School Historic District (East and South Dallas MPS), 200—500 Alcalde, 421—421A N. Carroll and 4315 Victor, Dallas, 95000330
Bianchi, Didaco and Ida, House (East and South Dallas MPS), 4503 Reiger Ave., Dallas, 95000311
Bryan—Peak Commercial Historic District (East and South Dallas MPS), 4214—4311 Bryan Ave. and 1325—1408 N. Peak, Dallas, 95000327
Central Congregational Church (East and South Dallas MPS), 1530 N. Carroll, Dallas, 95000307
Claremont Apartments (East and South Dallas MPS), 4636 Ross Ave., Dallas, 95000313
Colonial Hill Historic District (East and South Dallas MPS), Bounded by Pennsylvania Ave., I–45, US 75 and Hatcher, Dallas, 95000334
Dixon—Moore House (East and South Dallas MPS), 2716 Peabody, Dallas, 95000320
Ellis, James H. and Molly, House (East and South Dallas MPS), 2426 Pine, Dallas, 95000323
Emanuel Luthern Church (East and South Dallas MPS), 4301 San Jacinto, Dallas, 95000315
Fannin, James H., Elementary School (East and South Dallas MPS), 4800 Ross Ave., Dallas, 95000314
Forest Avenue High School, Old (East and South Dallas MPS), 3000 Martin Luther King, Jr., Blvd., Dallas, 95000318
Levi—Moses House (East and South Dallas MPS), 2433 Martin Luther King, Jr., Blvd., Dallas, 95000316
Levi—Topletz House (East and South Dallas MPS), 2603 Martin Luther King, Jr., Blvd., Dallas, 95000317
Mary Apartments (East and South Dallas MPS), 4524 Live Oak, Dallas, 95000310
Mrs. Baird's Bread Company Building (East and South Dallas MPS), 1401 N. Carroll, Dallas, 95000309
Peak's Suburban Addition Historic District (East and South Dallas MPS), Roughly bounded by Sycamore, Peak, Worth and Fitzhugh, Dallas, 95000328
Proctor Hall (East and South Dallas MPS), 1206 N. Haskell, Dallas, 95000308
Queen City Heights Historic District (East and South Dallas MPS), Roughly bounded by Eugene, Cooper, Latimer, Kynard and Dildock, Dallas, 95000332
Romine Avenue Historic District (East and South Dallas MPS), 2300—2400 blocks of Romine Ave., N side, Dallas, 95000333
Rush—Crabb House (East and South Dallas MPS), 2718 Pennsylvania, Dallas, 95000321
Shiels, Thomas, House (East and South Dallas MPS), 4602 Reiger Ave., Dallas, 95000312
Silberstein, Ascher, School (East and South Dallas MPS), 2425 Pine St., Dallas, 95000325
Trinity English Lutheran Church (East and South Dallas MPS), 3100 Martin Luther King, Jr., Blvd., Dallas, 95000319
Wheatley Place Historic District (East and South Dallas MPS), Bounded by Warren, Atlanta, McDermott, Meadow, Oakland and Dathe, Dallas, 95000331

VIRGINIA

Danville Independent City

Danville National Cemetery (Civil War Era National Cemeteries MPS), 721 Lee St., Danville (Independent City), 95000274

WISCONSIN

Milwaukee County

North Grant Boulevard Historic District, 2370—2879 N., Grant Blvd., Milwaukee, 95000290

[FR Doc. 95–5459 Filed 3–6–95; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32569]

Burlington Northern Railroad Company—Construction Exemption—Butler and Platte Counties, Nebraska

The Burlington Northern Railroad Company (BN) has petitioned the Interstate Commerce Commission (Commission) for authority to construct and operate a 4.34 mile rail line in Butler and Platte Counties, Nebraska. The Commission's Section of Environmental Analysis (SEA) has prepared an Environmental Assessment (EA). Based on the information provided and the environmental analysis conducted to date, this EA concludes that this proposal should not significantly affect the quality of the human environment if the recommended mitigation measures set forth in the EA are implemented. Accordingly, SEA preliminarily recommends that the Commission impose on any decision approving the proposed construction and operation conditions requiring Burlington Northern Railroad Company to implement the mitigation contained in the EA. The EA will be served on all parties of record as well as all appropriate Federal, state and local officials and will be made available to the public upon request. SEA will consider all comments received in response to the EA in making its final environmental recommendations to the Commission. The Commission will then consider SEA's final recommendations and the environmental record in making its final decision in this proceeding.

Comments (an original and 10 copies) and any questions regarding this Environmental Assessment should be filed with the Commission's Section of Environmental Analysis, Office of Economic and Environmental Analysis, Room 3219, Interstate Commerce Commission, Washington, D.C. 20423, to the attention of Michael Dalton (202) 927–6202. Requests for copies of the EA should also be directed to Mr. Dalton.

Date made available to the public: March 7, 1995.

Comment due date: April 6, 1995.

By the Commission, Elaine K. Kaiser, Chief, Section of Environmental Analysis, Office of Economic and Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 95–5507 Filed 3–6–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32667]

Georgia Department of Transportation—Acquisition Exemption—Central of Georgia Railroad Company

The Georgia Department of Transportation (GDOT), a non-carrier, has filed a verified notice under 49 CFR Part 1150, Subpart D—Exempt Transactions to acquire from Central of Georgia Railroad Company (COG) a

21.1-mile rail line between milepost SA–36.4, at Ardmore, and milepost SA–57.5, at Sylvania, in Effingham and Screven Counties, GA. The transaction also involves COG's assignment to GDOT of its interest, as lessor, in a lease agreement under which the line will continue to be operated by Ogeechee Railway Company (Ogeechee). The Commission exempted Ogeechee's operation of the line under the lease in *Istra Corporation—Assignment of Lease and Interchange Agreement Exemption—Ogeechee Railway Company,* Finance Docket No. 31478 (ICC served June 19, 1989). The involved transaction was to have been consummated as soon as possible after the exemption's February 17, 1995, effective date.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to reopen will not stay the exemption's effectiveness. Pleadings must be filed with the Commission and served on George P. Shingler, 40 Capitol Square, SW., Atlanta, GA 30334–1300.

Decided: February 28, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–5510 Filed 3–6–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

William W. Malone, M.D.; Revocation of Registration

On October 14, 1994, the Deputy Assistant Administrator of the Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to William W. Malone, M.D., (Dr. Malone) of Phoenix, Arizona, proposing to revoke his DEA Certificate of Registration, AM546789, and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated on Dr. Malone's lack of authorization to handle controlled substances in the State of Arizona; that his continued registration would be inconsistent with the public interest; and that Dr. Malone had been excluded from participation in a program pursuant to 42 U.S.C. 1320a-7(a). See 21 U.S.C. 824(a)(3), (4) and (5).

The Order to Show Cause was served on Dr. Malone by registered mail. More than thirty days have passed since the Order to Show Cause was received by Dr. Malone and the DEA has received no response thereto. Pursuant to 21 CFR 1301.54(e) and 1301.54(d), William W. Malone, M.D., is deemed to have waived his opportunity for a hearing. Accordingly, the Deputy Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Deputy Administrator finds that effective January 31, 1994, Dr. Malone's medical license was suspended, pursuant to a Consent Agreement, for a period of five years by the State of Arizona, Board of Medical Examiners (Arizona Board). As a result of the Arizona Board's action, Dr. Malone is no longer authorized to prescribe, dispense, administer or otherwise handle controlled substances in any schedule in the State of Arizona.

The Deputy Administrator concludes that the DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without State authority to handle controlled substances. See 21 U.S.C. 823(f). The Deputy Administrator and his predecessors have consistently so held. See Howard J. Reuben, M.D., 52 FR 8375 (1987); Ramon Pla, M.D., Docket No. 86–54, 51 FR 41168 (1986); Dale D. Shahan, DD.S., Docket No. 85–57, 51 FR 23481 (1986); and cases cited therein.

Since Dr. Malone lacks state authorization to handle controlled substances, it is not necessary for the Deputy Administrator to decide the issue of whether Dr. Malone's DEA registration should be revoked on the basis of 21 U.S.C. 824(a)(4) and (5), at this time.

No evidence of explanation or mitigating circumstances has been offered by Dr. Malone. Therefore, the Deputy Administrator concludes that Dr. Malone's DEA Certificate of Registration must be revoked.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AM5467849, previously issued to William W. Malone, M.D., be, and it hereby is, revoked, and any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective April 6, 1995.

Stephen H. Greene,

Deputy Administrator.

Dated: March 1, 1995.

[FR Doc. 95–5455 Filed 3–6–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–30,731]

The Hanover Shoe Company, Franklin and Marlinton, West Virginia; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 13, 1995 in response to a worker petition which was filed on February 13, 1995 on behalf of workers at The Hanover Shoe Company, Franklin & Marlinton, West Virginia.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–730,715–6). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 17th day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–5535 Filed 3–6–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30, 634]

Illinois Masonic Hospital, Chicago, Illinois; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 9, 1995 in response to a worker petition which was filed on January 9, 1995.

The investigation revealed that there was no available information regarding the employment of the single petitioner at Illinois Masonic Hospital, Chicago, Illinois or at other employers listed on the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 17th day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–5534 Filed 3–6–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,668]

Venus Fashions, Incorporated, Hoboken, New Jersey; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 28, 1994 in response to a worker petition which was filed on behalf of workers at Venus Fashions, Incorporated, Hoboken, New Jersey.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 17th day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–5533 Filed 3–6–95; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 17, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 17, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 21st day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Wirekraft Industries, Inc. (Co)	Marion, OH	02/21/95	02/09/95	30,740	Electrical Wiring.
Boeing of Portland (Wkrs)	Portland, OR	02/21/95	02/02/95	30,741	Aircraft.
Advanced Imaging Technology (Co.)	Toms River, NJ	02/21/95	02/03/95	30,742	Printer Ribbon Cassettes.
Transportation Manufacturing Corp. (Wkr)	Roswell, NM	02/21/95	02/03/95	30,743	Buses.
Gioia Pasta Co (BCT)	Buffalo, NY	02/21/95	02/07/95	30,744	Macaroni and Noodles.
Thermal Laminates Corp. (Wkrs)	Stevenson, WA	02/21/95	01/22/95	30,745	Molded Composite
Editorial America, S.A. (Wkrs)	Virginia Gardens, FL	02/21/95	02/11/95	30,746	Magazines.
Kay Lynn Sportswear, Inc. (Wkrs)	Palestine, TX	02/21/95	02/02/95	30,747	Ladies' Pants.
Halbar Enterprises (Co.)	Falmouth, ME	02/21/95	02/07/95	30,748	Design Ladies' Sportswear.
Bristol Myers SquibbOCAW	North Brunswick, NJ	02/21/95	02/03/95	30,749	Drugs and Vitamins.
Berkeley Belt, Inc. (ILGWU)	New York, NY	02/21/95	02/10/95	30,750	Ladies' Belts.
Fashion Button (ILGWU)	New York, NY	02/21/95	02/10/95	30,751	Covered Buttons.
Visador Company (PMSD)	Tacoma, WA	02/21/95	02/07/95	30,752	Glass for Home Fixtures.
Techmedica, Inc. (Wkrs)	Camarilo, CA	02/21/95	02/07/95	30,753	Orthopedic Implants & Instruments.
UDT Sensors, Inc., (Wkrs)	El Paso, TX	02/21/95	01/30/95	30,754	Opt-Electric Medical Diagnostic Equip.
Philips Components/Mineral Wells (Wkrs)	Mineral Wells, TX	02/21/95	02/10/95	30,755	Electronic Components.
CMS Gilbreth Packaging System (Wkrs)	Kingston, PA	02/21/95	02/03/95	30,756	Packaging Machinery.
Xerox Corporation (ACTWU)	Oak Brook, IL	02/21/95	12/07/95	30,757	Duplicating Equipment.
W.E. Kautenberg Co (Wkrs)	Freeport, IL	02/21/95	01/25/95	30,758	Brooms and Brushes.
Touch of Elegance, Inc. (Co)	Holland, MI	02/21/95	02/16/95	30,760	Silk Floral Designs.
Kennametal, Inc. (Wkrs)	El Paso, TX	02/21/95	02/16/95	30,760	Service—Sales, Warehouse, Distribution.
Motor Coach Industries (Wkrs)	Roswell, NM	02/21/95	02/03/95	30,761	Buses.

[FR Doc. 95–5531 Filed 3–6–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,523]

Xerox Corporation, Canadian, Latin American Manufacturing Organization, Pittsford, New York; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated January 26, 1995, one of the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance, TAA. The denial notice was issued on January 12, 1995 and published in the Federal Register on February 10, 1995 (60 FR 8061).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers of Canadian Latin American Manufacturing Organization (CLAMO) of Xerox Corporation in Pittsford, New York do not produce an article within the meaning of the Trade Act. The workers instead perform engineering and support services for articles produced overseas.

Only in very limited circumstances are service workers certified for TAA, namely, the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under a certification for TAA. (Emphasis supplied). These conditions were not met for the CLAMO workers of Xerox in Pittsford, New York.

The workers at the Office of Document Products in Henrietta, New York were certified because their services were in direct support of the production done at Xerox' Webster, New York plant whose workers were certified under petition TA–W–29,744.

The Trade Act was not intended to provide TAA benefits to everyone who is in some way affected by foreign competition but only to those who produced an article and experienced a decline in sales or production and employment as a result of increased imports of like or directly competitive products.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 22nd day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–5532 Filed 3–6–95; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

Advisory Committee; Establishment

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice; extension of comment period.

SUMMARY: In response to comments from the mining community, the Mine Safety and Health Administration (MSHA) is expanding the membership of its proposed advisory committee to eliminate pneumoconiosis among coal miners. To allow time for the mining community to respond to this change, MSHA is extending the comment period on the establishment of the advisory committee.

DATES: Comments must be filed on or before March 17, 1995.

ADDRESSES: Send written comments to the Office of Standards, Regulations and Variances, MSHA, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION: On January 31, 1995, the Secretary of Labor published a notice in the Federal Register (60 FR 5947) announcing the establishment of an advisory committee on the elimination of pneumoconiosis among coal miners. Comments regarding the establishment of the committee were due on March 1, 1995, as indicated in a notice extending the comment period published on February 17, 1995 (60 FR 9411).

In the January 1995 notice, MSHA announced that there would be seven committee members: one representing labor, one representing industry, and five persons who have no economic interest in the industry. In the comments received to date, several members of the mining community requested that the committee be expanded to include two labor representatives and two industry representatives. In response to these comments, MSHA has amended the proposed charter. With this notice, MSHA is announcing a nine-person advisory committee: two representing labor, two representing industry, and five persons who have no economic interest in the industry. To allow persons sufficient time to comment on this change, MSHA is extending the comment period until March 17, 1995.

Dated: March 2, 1995.

Andrea M. Hricko,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 95–5568 Filed 3–2–95; 3:40 pm]

BILLING CODE 4510–43–P

NATIONAL EDUCATION GOALS PANEL

National Education Goals Panel Meeting

AGENCY: National Education Goals Panel.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and location of a forthcoming meeting of the National Education Goals Panel. This notice also describes the functions of the Panel.

DATES: March 13, 1995 from 1 p.m.–3 p.m.

ADDRESSES: J.W. Marriott Hotel, 1331 Pennsylvania Avenue, N.W., Salon G, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Noemi Friedlander, Deputy Director, 1850 M Street, NW., Suite 270, Washington, DC 20036. Telephone: (202) 632–0952.

SUPPLEMENTARY INFORMATION: The National Education Goals Panel, a bipartisan panel of governors, members of the Administration, members of Congress and state legislators, was created to monitor and report annually to the President, Governor and Congress on the progress of the nation toward meeting the National Education Goals adopted by the President and Governors in 1989.

The meeting of the Panel is open to the public. The agenda includes a discussion of the evolving role and impact of national academic standards

and the role of the Goals Panel in promoting their use.

Dated: March 1, 1995.

Ken Nelson,

Executive Director, National Education Goals Panel.

[FR Doc. 95–5548 Filed 3–6–95; 8:45 am]

BILLING CODE 4010–01–M

NATIONAL INDIAN GAMING COMMISSION

Notice of Approval of Class III Tribal Gaming Ordinances

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public of class III gaming ordinances approved by the Chairman of the National Indian Gaming Commission.

FOR FURTHER INFORMATION CONTACT: Christine Lambert at (202) 632–7003, or by facsimile at (202) 632–7066 (not toll–free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulator Act (IGRA) 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The IGRA established the National Indian Gaming Commission (the Commission). Section 2710 of the IGRA authorizes the Commission to approve class II and class III tribal gaming ordinances. Section 2710(d)(2)(B) of the IGRA as implemented by 25 CFR 522.8 (58 FR 5811 (January 22, 1993)), requires the Commission to publish, in the Federal Register, approved class III gaming ordinances.

The IGRA requires all tribal gaming ordinances to contain the same requirements concerning ownership of the gaming activity, use of net revenues, annual audits, health and safety, background investigations and licensing of key employees. The Commission, therefore, believes that publication of each ordinance in the Federal Register would be redundant and result in unnecessary cost to the Commission. The Commission believes that publishing a notice of approval of each class III gaming ordinance is sufficient to meet the requirements of 25 U.S.C. 2710(d)(2)(B). Also, the Commission will make copies of approved class III ordinances available to the public upon request. Requests can be made in writing to: National Indian Gaming Commission, 1850 M St., NW, Suite 250, Washington, DC 20036.

The Chairman has approved tribal gaming ordinances authorizing class III gaming for the following Indian tribes:

Absentee—Shawnee Tribe of Oklahoma
Big Lagoon Rancheria
Coast Indian Community of the Resighini Rancheria
Coeur d'Alene Tribe
Colorado River Indian Tribes
Colusa Band of Wintun Indians
Confederated Tribes of the Grande Ronde
Indian Community
Confederated Tribes of the Siletz Reservation
Confederated Tribes and Bands of the Yakima Nation
Coushatta Tribe of Louisiana
Cow Creek Band of Umpqua Indians
Devils Lake Sioux Tribe
Eastern Band of Cherokee Indians
Flandreau Santee Sioux Tribe
Fort McDermitt Paiute—Shoshone
Grand Traverse Band of Ottawa/Chippewa Indians
Hannahville Indian Community
Kootenai Tribe of Idaho
Las Vegas Paiute Tribe
Lummi Nation
Mashantucket Pequot Tribe
Miami Tribe of Oklahoma
Modoc Tribe of Oklahoma
Mohegan Tribe of Indians of Connecticut
Oneida Tribe of Indians of Wisconsin
Pala Band of Mission Indians
Ponca Tribe of Nebraska
Prarie Band Potawatomi
Pueblo of Acoma
Pueblo of Pojoaque
Pueblo of San Felipe
Pueblo of Sandia
Pueblo of Santa Ana
Pueblo of Tao
Pueblo of Tesuque
Puyallup Tribe of Indians
San Manuel Band of Mission Indians
Santa Rose Band of Tachi Indians
Sault Ste. Marie Tribe of Chippewas
Seminole Tribe
Shoshone-Bannock Tribes
Squaxin Island Tribe
Sycuan Band of Mission Indians
Three Affiliated Tribes of the Fort Berthold Reservation
Tyme Maidu Tribe of the Berry Creek Rancheria
Upper Sioux Community
Wyandotte Tribe of Oklahoma
Upper Skagit Indian Tribe

Harold A. Monteau,

Chairman.

[FR Doc. 95–5478 Filed 3–6–95; 8:45 am]

BILLING CODE 7565–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

Cleveland Electric Illuminating Co. et al., Perry Nuclear Power Plant, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–58, issued to the Cleveland Electric Illuminating Company, et al. (the licensee), for operation of the Perry Nuclear Power Plant, Unit No. 1 (PNPP), located in Lake County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed action would revise the Technical Specifications (TS) to make them consistent with the current requirements of part 55 of Title 10 of the Code of Federal Regulations (10 CFR part 55), to delete training requirements that have been superseded by 10 CFR 50.120, and to allow an Operations Middle manager to hold a PNPP Senior Reactor Operator (SRO) license in lieu of the Operations Manager.

The proposed action is in accordance with the licensee's applications for amendment dated September 27, 1993, and December 16, 1994.

The Need for the Proposed Action

The proposed action, in the form of TS amendments is needed because training and qualification requirements have evolved over the past few years resulting in the obsolescence of some TS requirements. In addition, the alternative of allowing an Operations middle manager to hold a PNPP SRO license would allow the Operations Manager to return to normal duties following classroom training to continue with efforts to improve the operational performance of PNPP.

Environmental Impacts of the Proposed Action

The NRC staff has completed its evaluation of the proposed action and concludes that there will be no changes to the facility, to the training requirements, or to the intent of the qualification requirements as a result of the proposed license amendment.

Accoringly, the NRC staff concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect the

nonradiological plant effluents and has no other environmental impact. Accordingly, the NRC staff concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no changes to current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternate Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Perry Nuclear Power Plant, Units 1 and 2, documented in NUREG–0884.

Agencies and Persons Consulted

In accordance with its stated policy, the staff consulted with the State of Ohio regarding the environmental impact of the proposed action. The state of Ohio official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated September 27, 1993, and December 16, 1994, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW, Washington, DC 20555, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, MD., this 28th day of February 1995.

For the Nuclear Regulatory Commission.

Jon B. Hopkins, Sr.,

Project Manager, Project Directorate III–3, Division of Reactor Project—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–5493 Filed 3–6–95; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 72nd meeting on March 15–16, 1995, in Room T–2B1, 11545 Rockville Pike, Rockville, Maryland. The meeting will be open to public attendance, with the exception of portions that may be closed to discuss information and release of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 522b(c)(6).

The agenda for this meeting shall be as follows: *Wednesday and Thursday, March 15 and 16, 1995—8:30 a.m. until 6 p.m.*

During this meeting the Committee plans to consider the following:

A. *DOE's Program Approach*—The Committee will hear presentations and hold discussions with representatives of the Department of Energy and the NRC staff on DOE's program approach for a site suitability determination at the Yucca Mountain site.

B. *DOE's Engineered Barrier System Program*—The Committee will hear presentations and hold discussions with representatives of the Department of Energy and the NRC staff of DOE's efforts to design an engineered-barrier system for the proposed high-level radioactive waste repository.

C. *Disposal of Baghouse Dirt*—The Committee will hear a presentation by the NRC staff on the issues associated with the management and disposal of the mixed waste which is created when scrap steel being recycled in an electric arc furnace becomes inadvertently contaminated by a cesium source. The Florida Steel Corporation will also address the Committee on this issue.

D. *Branch Technical Position on Low-Level Radioactive Waste Performance Assessment*—The Committee will review issues associated with the NRC staff's Branch Technical Position on Low-Level Radioactive Waste Performance Assessment as outlined in a recent Commission paper.

E. *Groundwater Travel Time*—The Committee will review the approach proposed by the NRC staff for compliance evaluation associated with the groundwater travel time requirement in 10 CFR part 60. Presentations will also be made by ACNW consultants regarding their views on this topic.

F. *Meet with the Director, NRC's Division of Waste Management, Nuclear Materials Safety & Safeguards*—The Director will provide information to the Committee on current waste management issues, which may include the status of site characterization work at the Yucca Mountain site, and preview staff development of a technical position on expert judgment.

G. *Radiological Criteria for Decommissioning (tentative)*—The Committee will hear presentations and hold discussions with the NRC staff on a proposed rule on radiological criteria for decommissioning of NRC licensed facilities. A comparison will be made of this proposed rule and EPA's proposed Standards for Land Disposal of Low-Level Radioactive Waste.

H. *Preparation of ACNW Reports*—The Committee will discuss proposed reports on issues considered during this meeting and, as time permits, safety goals applicable to nuclear waste disposal and generic issues involving the direction of radioactive waste research.

I. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and working groups. The Committee will also discuss organizational and personnel matters related to the selection of new ACNW members and ACNW staff. A portion of this session may be closed to public attendance to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

J. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the Federal Register on October 7, 1994 (59 FR 51219). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACNW Executive Director, Dr. John T. Larkins, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACNW Executive Director prior to the meeting. In view of the possibility that the schedule for ACNW meetings maybe adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive

Director if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the ACNW Executive Director, Dr. John T. Larkins (telephone 301/415–7360), between 7:30 a.m. and 4:15 p.m. EST.

Dated: February 28, 1995.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 95–5496 Filed 3–6–95; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Information Conference

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The objectives of the conference are to give the licensees and the public insights into our approach to safety regulations and to provide a forum for feedback from those in attendance on their concerns about our overall approach, as well as feedback on differences that may exist on technical issues. NRC staff will provide information regarding on-going programs and potential new initiatives as a basis for discussion.

Discussions will proceed from general (i.e., the plenary sessions) to specific issues (i.e., the breakout sessions), with emphasis on plant operations and the NRC view of these operations based on experience in carrying out its regulatory mission. Three plenary sessions are planned, two of which will be followed by breakout sessions that will include presentations by the NRC staff and industry representatives.

DATES: Conference will be held May 9–10, 1995.

ADDRESSES: The conference will be held at the Crowne Plaza Hotel, 1750 Rockville Pike, Rockville, MD 20852. Telephone: (301) 468–1100 FAX (301) 468–0163 (Refer to Group REG).

FOR REGISTRATION INFORMATION CONTACT: ES Inc., by facsimile on (202) 835–0118 or by phone on (202) 835–1585.

PARTICIPATION: This conference is open to the general public; however, advance registration is required by April 24, 1995. The following is the preliminary program for the conference:

Tuesday, May 9, 1995—(8:30 a.m.–5:15 p.m.)

1. Welcome and Introductory Remarks—William T. Russell, Director Office of Nuclear Reactor Regulation
2. Morning Plenary Session: Regulatory Trends
3. Breakout Sessions:
   1. On-Line Maintenance and Maintenance Rule
   2. Steam Generator Issues
   3. Probabilistic Risk Assessment Policy and Implementation Plan
   4. 10 CFR Part 54—License Renewal Rulemaking and 10 CFR Part 51—Environmental Protection Rulemaking for License Renewal
4. Post-Luncheon Speaker: Commissioner Kenneth C. Rogers
5. Afternoon Plenary Session: Regional Administrator Panel Issues:
   1. Inspection Planning, Oversight, and Followup
   2. Cost Reduction and Safety
   3. Feedback Report on Inspector Professionalism
   4. Systematic Assessment of Licensee Performance Process
6. Breakout Sessions:
   1. Outage Planning and Shutdown Risk
   2. 10 CFR Part 52—Advanced Reactors/Design Certification
   3. Regulatory Process Improvements (Commitment Management and Cost Beneficial Licensing Actions)
   4. Boiling Water Reactor Internals Cracking
7. Dinner Speaker: Commissioner E. Gail de Planque

Wednesday, May 10, 1995—(8:00 a.m.–4:30 p.m.)

1. Breakout Sessions:
   1. NRC/Licensee Interface and Communications, Region I
   2. NRC/Licensee Interface and Communications, Region II
   3. NRC/Licensee Interface and Communications, Region III
   4. NRC/Licensee Interface and Communications, Region IV
2. Breakout Sessions:
   1. Reactor Vessel Material Issues
   2. Spent Fuel Issues/Dry Cask Storage/Independent Spent Fuel Storage Installations/Palisades and Davis Besse Experience
   3. New Source Term (Design Certification Application and Future Applications to Operating Licenses)
   4. Security Issues
3. Post Luncheon Speaker: James M. Taylor, Executive Director for Operations
4. Breakout Sessions:
   1. New Approach to Assessing Performance Through Inspection—the Integrated Performance Assessment Process (IPAP, formerly CIPP)
   2. Self Assessment (Inspection Procedures & Lessons Learned)
   3. Standard Technical Specifications
   4. Enforcement (Notice of Enforcement Discretions) and Allegations

Closing Plenary Session: NRR Executive Team and Regional Administrators

Note: There will be a question and answer period after each session each day.

Next year's conference is scheduled for April 10–11, 1996, at the Capitol Hilton Hotel, Washington, DC.

Dated in Rockville, Maryland this 2nd day of March 1995.

For the Nuclear Regulatory Commission.

Gary G. Zech,

Chief, Planning, Program, and Management Support Branch, Inspection and Support Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 95–5551 Filed 3–6–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–245]

Northeast Utilities Millstone Nuclear Power Station, Unit 1, License No. DPR–21; Receipt of Petitions for Director's Decision Under 10 CFR 2.206

Notice is hereby given that Anthony J. Ross (Petitioner) has filed four Petitions with the Executive Director for Operations requesting that escalated enforcement action be taken with regard to alleged violations at Millstone Nuclear Power Station, Unit 1.

By Petition dated December 30, 1994, the Petitioner requests that the Nuclear Regulatory Commission (NRC)(1) ''force'' Northeast Utilities (NU) to review all existing work orders for the past 10 or 12 years, with NRC oversight, to ensure that no quality assurance (QA) motor and connection work has certain deficiencies; (2) assess a Severity Level I violation against NU and its managers for apparent violations of 10 CFR 50.7 and a Severity Level III violation against a gas turbine system engineer at Millstone for his apparent violation of 10 CFR 50.7 and the company's ''Code of Conduct and Ethics''; and (3) institute sanctions against the system engineer and NU and its managers for engaging in deliberate misconduct in violation of 10 CFR 50.5. As grounds for these requests, the Petitioner asserts that (1) work control and procedure compliance are inadequate at Millstone, as evidenced by the use of standard commercial-grade lugs in a gas turbine fuel forwarding pump and motor (QA subsystems of the emergency gas turbine generator) that had apparently been crimped using diagonal pliers; improper Raychem splices, cable bend radius, and connections in the connection boxes of major safety-related QA equipment; and non-QA lugs crimped improperly and installed in fire protection quality assurance emergency lights; and (2) he had been subjected to ridicule by the gas turbine system engineer for raising concerns regarding the lugs on the gas turbine fuel forwarding pump and motor.

By Petition dated January 2, 1995, the Petitioner requests that the NRC: (1) Assess a Severity Level II violation and a Severity Level III violation against his department manager and first line

supervisor for their apparent violations of 10 CFR 50.7; (2) institute sanctions against his first line supervisor, NU, and the Millstone Unit 1 organization for engaging in deliberate misconduct in violation of 10 CFR 50.5; and (3) remove his first line supervisor from his position until a ''satisfactory solution to the falsifying of nuclear documents'' by this individual can be achieved. As grounds for these requests, the Petitioner asserts that (1) his first line supervisor willfully falsified nuclear documents in that he signed off on a surveillance of the gas turbine battery as having met acceptance criteria when the requirements had not been met; (2) he was ''unjustly chastised'' by his first line supervisor and department manager about absenteeism, and his department manager threatened him in a memorandum; and (3) the Unit 1 organization failed to enter into a four-day limiting condition for operation as required by technical specifications when the operations department was notified of the failed surveillance, in violation of 10 CFR 50.5. In addition, the Petitioner asserts that a number of violations occurred in 1992 and 1993 with regard to the emergency gas turbine battery, which have not been handled appropriately by the NRC and NU, and that the utility and NRC are engaged in an apparent ''cover-up'' of the problems.

By Petition dated January 5, 1995, the Petitioner requests that the NRC institute sanctions against his department manager, first line supervisor, and two coworkers for engaging in deliberate misconduct in violation of 10 CFR 50.5. The Petitioner also asserts that the NRC ''desperately needs to conduct an investigation'' of the procedure violations, and to audit the Unit 1 maintenance department measuring and test equipment (M&TE) folders to reveal widespread problems regarding noncompliance with this procedure. As grounds for this request, the Petitioner describes several examples of what he alleges have been violations of procedure WC–8, which requires that M&TE be signed out from and returned to a custodian.

By Petition dated January 8, 1995, the Petitioner requests that the NRC institute at least three sanctions against his department manager, and institute sanctions against his coworker and maintenance first line supervisor for engaging in deliberate misconduct in violation of 10 CFR 50.5. As grounds for this request, the Petitioner alleges that on numerous occasions since January 1994, his department manager instructed his coworkers to shut off or turn down the volume on the site paging system and site siren evacuation alarm in the Unit 1 maintenance shop, and his first line supervisor and coworker complied with this request, in violation of Technical Specification 6.8.1 and NUREG–0654.

The requests are being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The requests have been referred to the Director of the Office of Nuclear Reactor Regulation.

Copies of the Petitions are available for inspection at the Commission's Public Document Room at 2120 L Street, NW, Washington, DC, and at the local public document room for Millstone Unit 1 located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Dated at Rockville, MD, this 23rd day of February 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of the Nuclear Reactor Regulation.

[FR Doc. 95–5494 Filed 3–6–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 70–27 and License No. SNM–42 EA 94–169]

Babcock and Wilcox Company, Lynchburg, Virginia; Order Imposing Civil Monetary Penalty

I

Babcock and Wilcox Company (Licensee) is the holder of Special Nuclear Material (SNM) License No. SNM–42 issued by the Nuclear Regulatory Commission (NRC or Commission) on May 31, 1984. The license authorizes the Licensee to possess and use Special Nuclear Material in accordance with the conditions specified therein.

II

Inspections of the Licensee's activities were conducted on June 1–July 1, 1994, July 1–8, 1994, and July 1—August 9, 1994. The results of these inspections indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated October 21, 1994. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for Violations I.A and I.B.

The Licensee responded to the Notice in two letters, both dated November 20, 1994. In its responses, the Licensee protested the proposed imposition of the civil penalty, disagreed with NRC statements concluding that the violations represented a Severity Level III problem, denied Violations I.B.1, I.B.2, and II.C, and disagreed with the application of the escalation and mitigation factors.

III

After consideration of the Licensee's responses and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The Licensee pay a civil penalty in the amount of $37,500 within 30 days of the date of this order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing'' and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region II, 101 Marietta Street, NW., Suite 2900, Atlanta, GA 30323.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of the order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements set forth in Violations I.B.1 and I.B.2, as set forth in the Notice, and

(b) Whether, on the basis of such violations and the additional violations set forth in Section I of the Notice that the Licensee admitted, this Order should be sustained.

Dated at Rockville, Maryland this 27th day of February 1995.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix—Evaluations and Conclusion

On October 21, 1994, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during NRC inspections conducted on June 1–July 1, 1994, July 1–8, 1994, and July 1–August 9, 1994. Babcock and Wilcox Naval Nuclear Fuel Division (Licensee) responded to the Notice with a reply and an answer, both dated November 20, 1994. The Licensee admitted Violations I.A.1, I.A.2, II.A, and II.B, denied Violations I.B.1, I.B.2, and II.C, protested the proposed imposition of the civil penalty, disagreed with NRC statements concluding that the violations represented a Severity Level III problem, and disagreed with the application of the escalation and mitigation factors. The NRC's evaluations and conclusion regarding the Licensee's requests are as follows:

I. Evaluation of Violations Assessed a Civil Penalty

Restatement of Violation I.B.1

License Condition No. S–1 of SNM–42 requires that licensed material be used in accordance with statements, representations, and conditions contained in Sections I through IV of the application dated February 22, 1982, and supplements thereto.

Section III, Paragraph 2.0, of the application requires that the design of equipment and establishment of operating safety limits consider the pertinent process conditions and known modes of failure. Certain conditions may be deemed incredible if specifically excluded by experimental evidence or design considerations.

Section II, Paragraph 3.1, of the application states that the Change Review Board (CRB) reviews the effect on nuclear criticality safety, radiation protection, and other regulatory requirements of new and revised facilities, equipment and processes involving special nuclear material and ensures appropriate safety controls are considered.

Contrary to the above, pertinent process conditions and known modes of failure were not adequately considered in establishing operating safety controls or limits in that:

1. On June 7, 1990, the CRB reviewed and approved License Evaluation Request 89–155 based on a nuclear criticality safety analysis of acceptable material types, but failed to consider pertinent process conditions related to the operation of the drum counter system that were not excluded by experimental evidence or design considerations. This resulted in a failure to accurately measure quantities of U–235 in 2-liter bottles.

Summary of Licensee's Response to Violation I.B.1

In its reply to the Notice, the Licensee denies that a violation occurred as stated. The Licensee states that its nuclear criticality safety (NCS) evaluation did consider pertinent process conditions and known modes of failure in establishing operating safety limits for the low-level dissolution process in Uranium Recovery, and that the Nuclear Licensing Board (NLB), now CRB, did review the effect on NCS from processing materials measured by the drum counter in low-level dissolution and did ensure that appropriate safety controls were considered. The Licensee states that its Licensee Evaluation Request 89–155 was submitted, evaluated, and approved *only* because of the drum counter measurement problem which resulted in the low-level dissolution NCS limit being exceeded in 1989 and that the *purpose* of the NCS evaluation and NLB review and approval was to consider the pertinent process conditions and known modes of failure identified by the 1989 problem. The Licensee also states that the violation statement that pertinent process conditions and known modes of failure were not considered cannot be true since these were *the only* issues that were considered.

The Licensee further suggests that the evaluation was adequate in that the LER requested approval of processing only certain material types in low-level dissolution based on drum count measurements and only those types were approved for processing based upon the information in the LER. Further, the Licensee states that none of these material types were inaccurately measured by the drum counter subsequent to the approval, and the processing of these material types did not result in NCS limit violations.

The Licensee states that the scope of the LER was the *use* of drum counter measurements to comply with NCS limits for low-level dissolution and that no restraints were placed on the measurement of materials when the LER was approved; rather, restraints were placed only on the use of the measurements. The Licensee states that restraints on measuring materials by drum counting would be inappropriate. The Licensee adds that the primary purpose of the drum counter is to measure materials for material control and accountability and that the accuracy of the drum counter measurements is not a safety issue unless the measurements are used to meet safety limits. The Licensee adds that the NLB appropriately prohibited the use of the measurements of certain material types to meet safety limits for low-level dissolution, but also appropriately did not prohibit the measurement of any materials using the drum counter.

NRC Evaluation of Licensee's Response to Violation I.B.1

The NRC does not agree with the Licensee's statements that the Licensee considered pertinent process conditions and known modes of failure in establishing operating safety limits for the low-level dissolution process in Uranium Recovery and that the NLB reviewed the effect on NCS of the approval of processing materials measured by the drum counter in low-level dissolution. The Licensee was presented with a known mode of failure regarding a system that was used to demonstrate compliance with NCS limits. The known mode of failure was that the drum counter measurements could underestimate the amount of U–235 in a container.

The Licensee failed to consider pertinent process conditions such as scrap/waste generation, packaging, labeling, and storage that could affect the drum counter system's U–235 measurement accuracy and, therefore, did not ensure that pertinent and appropriate operating safety controls were considered to prevent the known failure. Thus, the review and approval of LER 89–155 was not considered adequate in establishing operating NCS controls or limits.

With respect to the Licensee's statement regarding the adequacy of its review of LER 89–155, the NRC notes that the review of the specific items in the single LER as presented may have been adequate for the very narrow and limited conditions of the LER presented; however, the license requires the Licensee to consider pertinent process conditions and known modes of failure in establishing NCS safety controls and limits and the Licensee failed to consider such conditions and known modes of failure.

The NRC agrees with the Licensee's statement that the primary purpose of using the drum counter is to measure materials for material control and accountability. However, in this case the Licensee was relying on the drum counter measurements to ensure that NCS limits were not exceeded. Given the nature of the Licensee's use of the measurements, the Licensee did fail to consider all failure modes that were not specifically excluded by experimental evidence or design considerations because, despite the Licensee's knowledge that drum counter mesaurements were inaccurate, such measurements were used for estimating quantities of U–235 in 2-liter bottles.

The NRC concludes that the Licensee did not provide bases to withdraw the violation; therefore, the violation occurred as stated.

Restatement of Violation I.B.2

License Condition No. S–1 of SNM–42 requires that licensed material be used in accordance with statements, representations, and conditions contained in Sections I through IV of the application dated February 22, 1982, and supplements thereto.

Section III, Paragraph 2.0, of the application requires that the design of equipment and establishment of operating safety limits consider the pertinent process conditions and known modes of failure. Certain conditions may be deemed incredible if specifically excluded by experimental evidence or design considerations.

Section II, Paragraph 3.1, of the application states that the Change Review Board (CRB) reviews the effect on nuclear criticality safety, radiation protection, and other

regulatory requirements of new and revised facilities, equipment and processes involving special nuclear material and ensures appropriate safety controls are considered. Contrary to the above, pertinent process conditions and known modes of failure were not adequately considered in establishing operating safety controls or limits in that:

2. From March 1989 through November 1990, the CRB reviewed drum counter evaluations that revealed measurement problems associated with material type and container fill level, but failed to establish requirements for remeasurement of materials previously measured by the drum counter and stored at the facility.

Summary of Licensee's Response to Violation I.B.2

In its reply to the Notice, the Licensee does not agree that this violation relates to the stated requirements. The Licensee further states that the need for remeasurement of materials in 1990 was neither a part of equipment design or the establishment of safety limits nor a part of the consideration of safety controls for low-level dissolution. The Licensee further states that the NLB is chartered to review and approve new or modified facilities, equipment, and processes and that it is not chartered to investigate safety problems or require actions to resolve safety problems. The Licensee maintains that the review and approval of changes to the low-level dissolution process did not impact the safety of material storage and, therefore, the need for remeasurement of material was not within the charter of the NLB.

The Licensee states that no information was presented to the NLB which indicated a need for remeasurement of scrap materials in storage. The Licensee states that the materials which were in storage and had not been acceptably measured were never identified during the evaluation, review, and approval process, and, therefore, there appeared to be no need for remeasurement.

The Licensee acknowledges that there were deficiencies related to the problems discussed, including the inaccurate measurements. However, the Licensee indicates that these deficiencies did not constitute the violation as stated.

NRC Evaluation of Licensee's Response to Violation I.B.2

The Licensee appears to take the wording of the violation out of context in that the Licensee has argued that the NLB is only responsible for considering information contained in LERs. The NLB, or another body of the Licensee's organization, should have established requirements for remeasurement of materials previously measured by the drum counter and stored at the facility. The Licensee's argument further heightens the NRC's concern as to whether the Licensee has an oversight organization that is charged with this responsibility. In addition, the argument points out that such narrow views are, in part, the reason for the Licensee's continued NCS problems (i.e., exceeding NCS limits). The license requires the Licensee to review the effect on NCS of new and revised processes involving special nuclear material (SNM) and to ensure that appropriate safety controls are considered.

During a review of revised drum counting processes, the NLB was presented with evidence that demonstrated problems existed which were associated with drum counter measurement accuracy. The NLB was, therefore, required to review the effect on NCS of items or processes that were using drum counter measurement results to deomonstrate compliance with NCS limits. Such a review should have included drum counter measurement results or materials stored in 55-gallon drums used to demonstrate compliance with the NCS limit of 350 grams of U–235 per drum.

The NRC concludes that the Licensee did not provide bases to withdraw the violation; therefore, the violation occurred as stated.

II. Evaluation of Violation not assessed a Civil Penalty, Restatement of Violation II.C

License Condition No. S–1 of SNM–42 requires that licensed material be used in accordance with statements, representations, and conditions contained in Sections I through IV of the application dated February 22, 1982 and supplements thereto.

Section II, Paragraph 10.4 of the application requires the retention of records of Change Review Board (CRB) actions for the longer of either two years or six months after termination of the operation.

Contrary to the above, as of June 29, 1994, records associated with License Evaluation Request (LER) 89–124, which provided the basis for a CRB action on LER 89–155, approving the counting of partially-filled bottles on the drum counter (an operation that was currently being performed), were not retained and the operation had not been terminated.

Summary of Licensee's Response to Violation II.C

In its reply, the Licensee denies that the violation occurred as stated. The Licensee states that the NLB (now CRB) took no action with regard to LER 89–124 because it was withdrawn and no information associated with LER 89–124 formed a basis for any NLB action on LER 89–155.

NRC Evaluation of Licensee's Response to Violation II.C

The Licensee's license requires the retention of records of NLB actions. The LER 89–155 file contains a document which reads: ''Subject: Low-Level Dissolving of Partial Containers, Reference: LER 89–124.'' This document states that the subject LER contained a description of all types of material normally processed in the low-level dissolvers and the means used to ensure nuclear safety while processing the various types of material. The document also states: ''After a thorough review of all the material presented in the LER [89–124] it was *concluded* [emphasis added] by the Nuclear Licensing Board that processing of partial containers was not the main area of concern.'' Therefore, the NLB did consider information from LER 89–124 in its review of LER 89–155. However, the LER 89–155 file does not contain any of the material that was thoroughly reviewed and used as the basis for the NLB to conclude that processing of partial bottles was not the main area of concern in the approval of LER 89–155.

The NRC concludes that the Licensee did not provide bases to withdraw the violation; therefore, the violation occurred as stated.

III. Summary of Licensee's Request for Mitigation

In its answer to the Notice, the Licensee states that a civil penalty was proposed based on Violations I.A and I.B constituting, in the aggregate, a Severity Level III problem. The Licensee argues that since Violation I.B is not a violation, only Violation I.A. remains and no aggregation can occur; therefore, there is no basis for a civil penalty. The Licensee maintains that even if Violation I.B were a violation, sufficient basis does not exist for a civil penalty and that the statements in Violation I.B, if accurate, would be causes of Violation I.A and should be written as part of Violation I.A. In addition, the Licensee believes aggregating a violation which may have occurred in 1990 with one which occurred in 1994 is inappropriate.

As to certain statements made in the Notice, the Licensee disagrees that there have been many examples of inadequate evaluations relating to known modes of failure, that it has had continued poor performance in the area of NCS, and that extensive management attention has not been directed toward identifying and correcting NCS problems. The Licensee indicates that the issues for which the civil penalty is being proposed were primarily caused by problems which predate most of its efforts and that it is applying significant attention and resources to strengthen its NCS program.

With respect to the application of escalation and mitigation factors the Licensee states that Violation I.A was not a self-disclosing event because if the operators had not compared the output values from the dissolvers to the mass limit and reported the limit violation, Violation I.A. would not have been known since there was no requirement to make such comparison. Further, the Licensee requests full mitigation because it showed enormous initiative in identifying the root causes, contrary to the NRC's Notice, which stated that the Licensee did not demonstrate initiative in identifying the root causes of the Violations I.A. and I.B, and because it developed long-term corrective actions in a timely manner. The Licensee also states that it suspended or severely restricted activities involving scrap and waste to prevent recurrence. The Licensee states that the September 23, 1994 report to the NRC addressed in detail why procedures, controls, and implementation were inadequate and did address corrective actions for the underlying problems revealed by the event. Additional information regarding other causes and corrective actions was provided to the NRC on November 16, 1994. Thus, based on all of its corrective actions, the Licensee indicates that a civil penalty is unwarranted. The Licensee also states that escalation of 100 percent for prior opportunity to identify is not warranted since it demonstrated that the February 1994 event did not provide opportunities for identification and that the March 1989 problem provided limited opportunities for this identification.

NRC Evaluation of Licensee's Request for Mitigation

With respect to the Licensee's argument that aggregating Violations I.A and I.B is inappropriate, the NRC concluded, as described above, that Violation I.B occurred as stated. The NRC determined that Violations I.A and I.B were related in that they have the same fundamental underlying cause and similar programmatic deficiencies, namely, the lack of management attention to NCS controls. Violation I.A involved exceeding a NCS limit. Violation I.B was issued for failure to consider process conditions and known modes of failure in the NCS analysis. These are two different issues in NCS controls and two different license requirements. Therefore, the NRC concludes both that aggregating Violations I.A and I.B as a Severity Level III was appropriate regardless of the time period between the two violations and that an escalated enforcement action was warranted.

With regard to the Licensee's disagreement with NRC statements, the NRC notes that there are 17 documented Licensee violations of NRC requirements involving NCS controls over the past two years. Despite these noted numerous weaknesses, the Licensee's NCS evaluations and analyses have not been adequately strengthened as evidenced by the failures described in NRC inspection reports 70–27/94–12, 94–15, and 94–16. These violations and other weaknesses clearly represent continued poor performance and inadequate management attention because the Licensee has not sufficiently improved its performance over the past two years to prevent recurring problems in the area of NCS. Furthermore, the Licensee's argument regarding the function of the NLB is narrow and does not support the Licensee's statements that extensive management attention has been placed in this area to ensure identification and correction of NCS problems. While the NRC acknowledges that some management attention has been directed toward identifying and correcting NCS problems, Licensee management must ensure that proper NCS controls and oversight are in place and are adhered to, and that NCS problems are thoroughly investigated to ensure that effective corrective actions are in place to prevent such problems from recurring or leading to other problems.

The NRC neither escalated nor mitigated for the identification factor because while the NRC recognizes that the Licensee identified Violation I.A, the Licensee should note that the NRC identified Violation I.B. In addition, Section VI of the Enforcement Policy states, in part, that a ''self-disclosing' event as used in this policy statement means an event that is readily obvious by human observation * * *'' The Licensee's Chemical Processing operating procedures required operators to: compare the amount of U–235 added to the low-level dissolvers with the amount removed, determine if the difference between the two exceeded 40 percent and, if so, report such excessive differences to management. Also, the Licensee's NCS limits required the amount of U–235 in each low-level dissolver zone be limited to 350 grams. Because the license requires procedures and postings to be followed and because doing so made the 350 gram limit violation readily obvious to human observation, the event was correctly categorized as self-disclosing.

Furthermore, Section VI of the Enforcement Policy also states, in part, that ''The base civil penalty may also be mitigated up to 25% when the licensee identifies a violation resulting from a self-disclosing event where the licensee demonstrates initiative in identifying the root cause of the violation.'' While the NRC acknowledged that the Licensee identified inadequacies in procedures, controls, and implementation systems, the NRC maintains that the Licensee did not demonstrate initiative in identifying the root cause of the violations because its analysis did not ask or answer *why* these procedures, controls, and systems were inadequate and what should be done to prevent such recurrence. Specifically, NRC involvement was needed before acceptable corrective action was taken in that it was not until NRC requested and conducted a management meeting with the Licensee on August 3, 1994, that the Licensee agreed to evaluate the series of incidents that had been occurring in an attempt to uncover the underlying generic root cause(s).

With regard to the corrective action factor, the NRC acknowledged that the Licensee took some immediate corrective actions to stop operations of the low-level dissolver and formed an incident review team to review the event in detail and determine appropriate corrective actions. The NRC did give the Licensee credit for these corrective actions in that escalation for this factor was not applied. However, the NRC affirms that full mitigation for this factor is not warranted because: (1) The Licensee did not demonstrate initiative in identifying the root cause of the violations because NRC involvement was needed before adequate actions were taken; (2) the Licensee's initial long term corrective actions were not comprehensive; and (3) the Licensee's development of long term corrective actions was not timely.

As noted earlier, it was not until NRC requested and conducted a management meeting that the Licensee agreed to evaluate the series of incidents in an attempt to identify the root cause. The results of that evaluation were discussed in a management meeting on November 16, 1994, and were submitted by the Licensee on November 20, 1994, as an attachment to the Licensee's reply to the Notice. Furthermore, on July 8, 1994, as the NRC's Augmented Inspection Team discussed its findings with Licensee management, the Licensee was requested to submit a copy of its investigation team findings, including corrective actions, to the NRC. The Licensee stated that the report would be completed and made available to the NRC on or about August 5, 1994. However, the report was not completed and made available to the NRC until September 23, 1994, after the enforcement conference. During the enforcement conference, NRC asked the Licensee for a time schedule for implementing the corrective actions discussed by the Licensee at the conference. More than two months after the low-level dissolver event, the Licensee did not have long-term corrective action time schedules firmly in place.

Regarding the prior opportunity to identify factor, the NRC believes that effective corrective action, if taken, for events occurring in March 1989 and February 1994, which revealed weaknesses in the drum counter measurement system, could have prevented the June 1994 event. Specifically, if the Licensee had adequately reviewed the effect on NCS of items or processes that were using drum counter measurement results and implemented effective corrective actions, the June 1994 event could have been prevented. Following the March 1989 and February 1994 events, a formal incident review and root cause analysis were not performed and corrective actions were not taken. The NRC expects licensees to learn from their mistakes and implement adequate and effective corrective actions to prevent recurrence. In its answer to the Notice, the Licensee acknowledges that its corrective actions would have prevented the low-level dissolution violation had they been followed.

The NRC concludes that the escalation and mitigation factors were applied appropriately and in accordance with the Enforcement Policy.

NRC Conclusion

The NRC concludes that Violations I.B.1, I.B.2, and II.C occurred as stated, that Violations I.A and I.B were appropriately categorized as a Severity Level III problem, and that an adequate basis for mitigation of the proposed civil penalty was not provided by the Licensee. Consequently, the proposed civil penalty in the amount of $37,500 should be imposed by Order.

[FR Doc. 95–5495 Filed 3–6–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Financial Management

Proposed Rescission of OMB Circular A–73

AGENCY: Office of Management and Budget, Office of Federal Financial Management.

ACTION: Notice of Proposed Rescission of OMB Circular A–73.

SUMMARY: Publication of OMB's intention to rescind Circular A–73.

FOR FURTHER INFORMATION CONTACT: Suzanne Murrin, OMB, Office of Federal Financial Management, (202) 395–6911.

Dated: February 28, 1995.

John B. Arthur,

Associate Director for Administration.

Office of Management and Budget

Rescission of OMB Circulars

AGENCY: Office of Management and Budget.

ACTION: Notice of Proposed Rescission of OMB Circular A–73.

SUMMARY: Notice is hereby given that OMB intends to rescind Circular No. A–73, Audit of Federal Operations and Programs. The current circular codifies what are now common audit practices throughout the Federal Government and extends the application of certain principles in the Inspector General Act of 1978 (IG Act) to those agencies not covered by the IG Act. Circular No. A–73 is unnecessary because: (1) Its audit policy direction is largely hortatory and (2) the IG Act has been expanded in 1988 amendments to cover almost all Federal entities of significant size.

DATES: Persons who wish to comment on the proposed rescission of Circular No. A–73 should submit their comments no later than April 7, 1995. The rescission will take place May 22, 1995, unless the comments raise significant concerns regarding the proposed rescission.

ADDRESSES: Comments should be addressed to: Suzanne Murrin, Office of Federal Financial Management, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW, Room 6025, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For further information on the proposed rescission of Circular No. A–73, contact Suzanne Murrin on (202) 395–6911. For further information on OMB's overall review of its circulars, contact Frank J. Seidl, III, Staff Assistant, on (202) 395–5146; or Rosalyn J. Rettman, Associate General Counsel for Budget on (202) 395–5600.

SUPPLEMENTARY INFORMATION: The Director of the Office of Management and Budget (OMB) has initiated a systematic review of all OMB circulars, as part of efforts to reduce unnecessary Government directives. As part of this initiative, each OMB circular is being reviewed to see whether it should be rescinded or whether its requirements can be simplified.

[FR Doc. 95–5489 Filed 3–6–95; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–92]

Termination of Section 301 Investigation and Action Regarding the People's Republic of China's Protection of Intellectual Property and Provision and Market Access to Persons Who Rely on Intellectual Property Protection

AGENCY: Office of the United States Trade Representative.

ACTION: Termination of investigation of certain acts, policies and practices of the Peoples' Republic of China (China) initiated under section 302 of the Trade Act of 1974, as amended (Trade Act); termination of action pursuant to section 301 of the Trade Act; monitoring of trade agreement under section 306 of the Trade Act; revocation of priority foreign country identification under section 182(c)(1)(B) of the Trade Act; and requests for public comment.

SUMMARY: On February 4, 1995, the United States Trade Representative (USTR) determined pursuant to section 304(a)(1)(A) of the Trade Act that certain acts, policies and practices of China with respect to the enforcement of intellectual property rights and the provision of market access to persons who rely on intellectual property protection are unreasonable and constitute a burden or restriction on U.S. commerce. The USTR also determined pursuant to section 304(a)(1)(B) and 301(b) that action in the form of increasing duties on certain products of China to 100 percent ad valorem was appropriate. 60 FR 7230 (February 7, 1995). Having reached a satisfactory resolution of the issues under investigation, the USTR has determined to: (1) Terminate this section 301 investigation; (2) monitor implementation of the agreement under section 306 of the Trade Act; (3) terminate the action ordered pursuant to section 301 with respect to raising tariffs on certain products originating in China; and (4) revoke China's identification as a priority foreign country under section 182 of the Trade Act. Public comments will be accepted on the decision to terminate the action ordered pursuant to section 301.

EFFECTIVE DATE: The modification of the Harmonized Tariff Schedule of the United States (HTS) described below is effective with respect to imports entered, or withdrawn from warehouse for consumption, on or after February 26, 1995. The determinations to terminate the action taken under section 301 and revoke China's status as a priority foreign country were made by the USTR on February 26, 1995. Written comments from interested persons are due by noon on Friday, March 10, 1995.

ADDRESSES: Section 301 Committee, Office of the United States Trade Representative, Room 223, 600 17th Street, NW., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Deborah Lehr, Director for China and Mongolian Affairs (202) 395–5050, or Thomas Robertson, Assistant General Counsel (202) 395–6800.

SUPPLEMENTARY INFORMATION: On June 30, 1994, China was identified as a priority foreign country under the ''special 301'' provisions of the Trade Act for its failure to enforce intellectual property rights or to provide fair and equitable market access to persons who rely on intellectual property protection. On the same day, the USTR initiated an investigation of those acts, policies and practices of China that were the basis for its identification as a priority foreign country (PFC) under section 182(c)(1)(B) of the Trade Act. 59 FR 35558 (July 12, 1994).

On December 31, 1994, the USTR extended the investigation until February 4, 1995, and sought public comment on proposed determinations under section 304(a)(1). 60 FR 1829 (January 5, 1995). On February 4, 1995, the USTR determined that the acts, policies and practices of the Chinese government at issue in the investigation are unreasonable and constitute a burden or restriction on U.S. commerce. The USTR also determined that the appropriate action in response was to impose duties of 100 percent ad valorem on certain Chinese-origin products that were entered, or withdrawn from warehouse for consumption, on or after February 26, 1995. 60 FR 7230 (February 7, 1995).

After extensive negotiations, the United States and China entered into an exchange of letters (including an Action Plan for the Effective Protection and Enforcement of Intellectual Property Rights) by which China will address the issues raised by the United States in the negotiations. Under the agreement, China will, among other things, establish a system at the central, provincial and local levels to provide strong, transparent and responsive enforcement of intellectual property rights; initiate a special enforcement period during which enhanced resources will be allocated to the enforcement of intellectual property rights; establish an effective border enforcement regime; ensure the transparency of its legal regime,

including the publication of all laws and regulations concerning intellectual property protection; and provide U.S. right holders with enhanced access to the Chinese market. The United States and China will consult regularly on China's implementation of the agreement.

On the basis of the measures that China has agreed to undertake in the agreement, the USTR has decided that the action taken pursuant to section 301(b) (the increase in tariffs on certain products from China) is no longer appropriate and should be terminated. The United States Custom Service has been notified of this determination. Pursuant to section 182(c)(1)(A) of the Trade Act, the USTR has also decided to revoke China's designation as a priority foreign country.

Section 307(a)(1)(C) of the Trade Act authorizes the USTR to terminate any action, subject to the specific direction, if any, of the President, if, inter alia, the USTR determines that the action being taken under section 301(b) of the Trade Act is no longer appropriate. Prior to terminating this 301 action, the USTR consulted with the domestic industries concerned regarding the modification and termination of the existing action. An opportunity for public comment prior to this action was not possible in view of the need for expeditious action. Immediate termination of the 301 action was required so that U.S. intellectual property right holders could immediately start to receive the benefits of the agreement entered into with China. However, interested members of the public are now invited to submit comments to USTR regarding this action in accordance with the directions provided below. USTR will review these comments upon receipt.

Pursuant to section 306 of the Trade Act, the USTR will monitor China's implementation of the agreement. If, on the basis of this monitoring, the USTR considers that China is not satisfactorily implementing the terms of the agreement, the USTR will decide what further action to take under section 301(a) of the Trade Act.

Public Comments

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) and are due no later than noon, Friday, March 10, 1995. Comments must be in English and be provided in twenty copies to: Chairman, section 301 Committee, Room 223, USTR, 600 17th Street, N.W., Washington, D.C. 20506.

Comments will be placed in a file [Docket 301–92] open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked ''Business Confidential'' in a contrasting color ink at the top of each page (on each of the 20 copies), and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the docket open to public inspection.

Modification of the Harmonized Tariff Schedule of the United States (HTS)

Accordingly, the HTS is hereby modified by deleting subheadings 9903.50.01 through 9903.50.33, inclusive, and the superior text immediately preceding such subheadings, effective February 26, 1995.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 95–5664 Filed 3–6–95; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35428; File No. SR–NASD–94–9, Amendment No. 2]

Self-Regulatory Organizations; Notice of Amendment No. 2 To Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Non-member Viewing Access to SelectNet

February 28, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 30, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend its proposal to enhance the transparency of, and nonmember viewing access to, ''broadcast'' orders transmitted through The Nasdaq Stock Market, Inc.'s (''Nasdaq'') SelectNet service. Specifically, the NASD proposes to disseminate a separate feed of ''broadcast'' orders entered into SelectNet that will be available to vendors.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In March 1994, the NASD proposed modifications to the operation of Nasdaq's SelectNet service that would permit viewing access by non-members who are subscribers to the Nasdaq Workstation Level 2 service to view ''broadcast'' orders immediately as they are entered into the service.[3] In addition, because of the additional non-member constituencies that will be able to view all broadcast orders entered into SelectNet, the NASD also proposed to modify its order-entry procedure for SelectNet to ensure that broadcast orders are entered into and displayed through SelectNet anonymously. This feature was proposed for two reasons: (a) To preserve incentives for dealers to continue to make markets that add liquidity to the market; and (b) to avoid conditioning the market in one direction or another by orders identified with particular market makers or order entry firms.[4] With this filing, the NASD

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The subscriber fees imposed for receipt of this information will be set forth in a separate rule filing submitted pursuant to Section 19(b) of the Act. The NASD does not believe that Commission consideration of the instant proposal should be contingent upon approval of the fees for this service, as Nasdaq will make the service available at no charge until an appropriate fee structure for the service is approved by the Commission.

[3] Securities Exchange Act Release No. 33938 (Apr. 20, 1994), 59 FR 22033 (Apr. 28, 1994).

[4] The original notice of the NASD's proposal set forth in greater detail the basis for this feature. Specifically, the original notice states that:

Because of the additional non-member constituencies that will be able to view all broadcast orders, the NASD is also proposing to

Continued

proposes to modify its proposal by providing for the dissemination of a separate feed of ''broadcast'' orders entered into SelectNet that will be available to vendors. In particular, the feed to vendors will contain information on all orders broadcast in SelectNet, partial executions of these orders, full executions of these orders, and, if applicable, when these orders timed-out or were canceled.

SelectNet is the service operated by The Nasdaq Stock Market that permits NASD member firms to enter buy or sell orders in Nasdaq securities into the system, direct those orders to a single market maker (directed orders) or broadcast the order to all market makers in the security. Originally implemented in its predecessor form in 1988 as the Order Confirmation Transaction service,[5] the primary function of that service was to offer an automated alternative to the telephone as a method of contacting market makers in times of market stress. To this end, order entry firms could direct an order to buy or sell a Nasdaq security to a single market maker in the issue. When the service was enhanced and renamed SelectNet in 1990,[6] the broadcast feature was added to permit a wider dissemination of orders (*i.e.*, ''broadcast orders'') to all market makers in an issue. In addition, the redesigned system allowed market makers in a subject security to send a broadcast order to all member firms that had designated that security in their SelectNet ''watch file,''[7] whether the firm was a market maker or not. In 1992, the service was expanded to add pre-opening and after-hours sessions,[8] so that today SelectNet is available for members to negotiate and execute orders from 9:00 a.m. until 5:15 p.m. Eastern Time. The Nasdaq Stock Market operates SelectNet to provide investors and members with an automated system to facilitate communication of trading interest between members, negotiation of orders with the possibility of price improvement with automated, locked-in executions, and dissemination of last sale reports to the tape. In addition, SelectNet retains the original functionality of the service as a replacement for one-on-one communication between members, especially in times of market stress.

Since its enhancement in December 1990, the service has grown in popularity with members and traffic has increased significantly—from an average of 3,000 transactions and 6 million shares daily in the first half of 1991 to over 10,000 transactions and more than 12 million shares daily in December 1994. As the system's usage has increased, institutions and other non-members have expressed a desire to view the orders broadcast within the service. Indeed, the Commission's Division of Market Regulation (''Division'') recommended that ''the NASD [should] examine how to improve access to information regarding orders entered into SelectNet'' in its Market 2000 Report.[9] Accordingly, as noted above, in March 1994, the NASD filed the instant rule proposal with the Commission.

With this amendment to the filing, the NASD now proposes to enhance further the market transparency benefits of the proposal by providing market participants with a more cost-effective and efficient means to receive information on orders broadcast in SelectNet. In particular, by making SelectNet information available to investors without the need for them to procure Nasdaq Workstation Level 2 Service, the NASD believes investors will have ready viewing access to an expanded spectrum of information regarding larger-size orders in Nasdaq securities at an affordable and reasonable cost. With this information, the NASD believes investors will be better able to assess the overall supply and demand for a particular Nasdaq stock, which, in turn, will permit them to effect transactions in a more cost-effective manner. Thus, the NASD believes this proposal, as amended, will promote the protection of investors and the maintenance of fair and orderly markets. The NASD also believes that the proposal directly responds to one of the Division's key recommendations designed to improve the transparency of orders broadcast through the SelectNet service.

This proposed amendment also is responsive to comments raised regarding the NASD's proposal. In particular, the Investment Company Institute (''ICI'') and the New York Stock Exchange (''NYSE'') commented that the SelectNet order information should be made available to all subscribers of Nasdaq Level 2 price information, not just to non-members that possess Nasdaq Level 2 Workstations.[10] Without making the SelectNet order information more broadly available at a lower cost, these commentators maintain that the improvements to market transparency and the benefits to investors resulting from the proposal will be minimal. The

modify its order-entry procedure for SelectNet to ensure that broadcast orders are entered into and displayed through SelectNet anonymously. This feature is proposed for two reasons: To preserve incentives for dealers to continue to make markets that add liquidity to the market and to avoid conditioning the market in one direction or another by orders identified with particular market makers or order entry firms. First, the NASD believes that it is very important to retain incentives for market makers to participate in the market. Market makers put quotes in the Nasdaq system as a form of advertisement that they stand ready and willing to transact business at their quoted prices and sizes. There are obligations that accrue to those market makers, however, the NASD and the SEC require market makers to be firm for their quotes and to participate in order execution systems. Enabling order entry firms to advertise buy and sell interest freely, with no concomitant market maker obligations, by attaching their names to SelectNet orders so that anyone with a Workstation would be able to contact the entity directly by telephone, would eviscerate the positive attributes of being a market maker with a quote in the Nasdaq system.

Second, allowing market makers (or order entry firms) to put their names on broadcast orders might condition or influence the market in a security by advertising the buying or selling power of the member firm. For example, if a broker/dealer that is considered a lead market maker or a major institutional block positioner in a security was interested in buying shares in the stock, it might broadcast a sell order in SelectNet, identify its name on the order, and cause the market to react to the sell interest and the power of the firm's name. Accordingly, other market makers in the stock might react to the sell interest by dropping their bids and the lead market maker would be able to buy stock at a lower price than would otherwise have been the case, simply because it was advertising its name, or conditioning the market. Indeed, similar conditioning effects might be caused by any firm, order entry firm or market maker, by entering orders that are quickly canceled without actual trading interest by the entry firm. Accordingly, the NASD proposes that member firms enter all broadcast orders anonymously.

Although orders must be entered on an anonymous basis, once two firms are in negotiation over the terms of the broadcast order, the order entry firm may of course identify itself to the contra side. Presently, SelectNet provides members the option of identifying themselves on broadcast orders through their market maker identification symbol, although this alternative is seldom used. The information on SelectNet broadcast orders will be made available to members and nonmember subscribers to the Nasdaq Workstation Level 2 service. This proposal is intended to avoid conditioning the market with orders that might be canceled at any time without actual trading interest by the order entry firm.

Securities Exchange Act Release No. 33938 (Apr. 20, 1994), 59 FR 22033 (Apr. 28, 1994).

[5] See Securities Exchange Act Release No. 25263 (Jan. 11, 1988), 53 FR 1430 (Jan. 19, 1988).

[6] See Securities Exchange Act Release No. 28636 (Nov. 21, 1990), 55 FR 49732 (Nov. 30, 1990).

[7] The SelectNet watch file is established by each member firm and may contain as many as 300 securities. The member will then receive any directed or broadcast order selected for inclusion in the watch file.

[8] See Securities Exchange Act Release No. 30581 (Apr. 14, 1992), 57 FR 14596 (Apr. 21, 1992).

[9] Market 2000: An Examination of Current Equity Market Developments, Division of Market Regulation, Securities and Exchange Commission (Jan. 1994).

[10] See letters from Craig S. Tyle, Vice President & Senior Counsel, Securities and Financial Regulation, ICI, to Jonathan G. Katz, Secretary, SEC, dated May 19, 1994, a 2–3, and from James E. Buck, Senior Vice President & Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated June 2, 1994, at 4–7.

NASD believes these comments are fully addressed by this proposed amendment.

The NASD believes the proposed rule change is consistent with Sections 15A(b)(6) and 11A(a)(1)(C) of the Act and is a particularly timely and germane response to the recommendations contained in the Market 2000 study. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Section 11A(a)(1)(C) finds that it is in the public interest to, among other things, assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities and economically efficient execution of securities transactions.

The SelectNet service has served as an alternative to the telephone in times of market stress and as a system to broadcast orders to market makers for economically efficient negotiations and executions. By permitting non-members to view those broadcast orders, the NASD is removing impediments to transparency of market information and is facilitating transactions for those non-members who will now be able to see all broadcast orders in the service and timely arrange for the execution of such orders by a member. Although the orders in SelectNet do not represent quotations or last sale reports, the NASD believes that the information is valuable to investors and market participants and should be transparent and disseminated to non-members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File Number SR–NASD–94–9 and should be submitted by March 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5462 Filed 3–6–95; 8:45 am]

BILLING CODE 8010–01–M

[11] 17 CFR 200.30–3(a)(12).

February 28, 1995.

Self-Regulatory Organization; Philadelphia Depository Trust Company; Order Approving Proposed Rule Change Concerning Disposal of Expired Securities Certificates of Warrants and Rights

[Release No. 34–35426; File No. SR–Philadep–94–05]

On October 6, 1994, the Philadelphia Depository Trust Company (''Philadep'') filed a proposed rule change (File No. SR–Philadep–94–05) with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal appeared in the Federal Register on January 3, 1995, to solicit comment from interested persons.[2] No comments were received by the Commission. This order approves the proposal.

I. Description of the Proposal

The proposal authorizes Philadep to implement a program which allows it to destroy certain expired securities certificates, specifically expired warrants and rights. This destruction policy will enable Philadep to reduce the administrative and safekeeping expenses associated with keeping expired warrants and rights related certificates in its vault.

In implementing this program, Philadep will adhere to several procedures to help assure that Philadep destroys only certificates for which the warrant or rights have expired. First, Philadep will contact the transfer agent or the issuer of the securities after the securities have reached their expiration dates to verify that the respective warrants or rights have expired. Second, Philadep will obtain written confirmation from the transfer agent that the certificates representing the warrants or rights have expired. If there is no transfer agent, Philadep will obtain such written confirmation from the issuer. Philadep also will exercise such other reasonable due diligence, as it may deem necessary under the circumstances, to confirm the expired nature of the respective certificates including consulting with Philadep's legal department, its internal audit department, and its senior management. Third, Philadep: (1) Will notify its participants that the certificates have expired in the judgment of the transfer agent or of other appropriate parties where there is no transfer agent; (2) will delete such securities positions from its participants' account on or after the thirtieth day following the date of the notice to the participants; and (3) will mark the securities certificates and send them to its internal audit department for destruction. Additionally, Philadep has agreed to retain copies of all such destroyed certificates on microfilm or on other mediums for not less than one year.[3]

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 35153 (December 27, 1994), 60 FR 161.

[3] Telephone conversation between J. Keith Kessel, Compliance Officer, Philadep, and Thomas C. Etter,

Continued

II. Discussion

The Commission believes that the proposal is consistent with the Act and particularly with Section 17A of the Act.[4] Section 17A(b)(3)(F) of the Act[5] requires that the rules of a clearing agency be designed to safeguard the funds and securities which are in the custody or control of a clearing agency or for which it is responsible. Additionally, Section 17A(a)(1) of the Act[6] directs the Commission to encourage the reduction of unnecessary costs by persons facilitating transactions on behalf of investors.

These new procedures provide for the implementation of a destruction policy that will permit Philadep to eliminate certain expired and worthless securities certificates rather than maintain them in its vault. As a result, Philadep expects to reduce its administrative expenses that are associated with storing such certificates. The proposal also contains numerous safeguards concerning the selection of the securities certificates to be destroyed, and the Commission believes that the safeguards in question are reasonably designed to reduce the risk that Philadep will select for destruction certificates for which the warrants or rights have not expired.[7]

III. Conclusion

For the reasons discussed above, the Commission believes that the proposal is consistent with the requirements of the Act, particularly those of Section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the above-mentioned proposed rule change (File No. SR–Philadep–94–05) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5464 Filed 3–6–95; 8:45 am]

BILLING CODE 8010–01–M

Jr., Senior Counsel, Division of Market Regulation, Commission (February 27, 1995).

[4] 15 U.S.C. 78q–1 (1988)

[5] 15 U.S.C. 78q–1(b)(3)(F) (1988)

[6] 15 U.S.C. 78q–1(a)(1) (1988)

[7] The Commission is expressing no opinion here on the means that Philadep will use for the actual physical destruction of any certificate or on the related standards that may apply. These are separate matters and are not part of this rule proposal.

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1994).

[Rel. No. IC–20930; File No. 812–9410]

Jackson National Life Insurance Company of Michigan, et al.

February 28, 1995.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Jackson National Life Insurance Company of Michigan (''Company''), Jackson Michigan Separate Account–I (''Separate Account'') and Jackson Financial Services, Inc. (''Distributor'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Separate Account and other separate accounts established by the Company in the future in connection with the issuance and sale of certain flexible premium variable annuity contracts (''Contracts'') and any contracts that are similar in all material respects to the Contracts (''Other Contracts'').

FILING DATE: The application was filed on December 30, 1994. An amended application was filed on February 24, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and servings Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 27, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Mark J. Mackey, Esq., Routier, Mackey and Johnson, P.C., 1700 K Street, NW., Suite 1003, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Mark C. Amorosi, Attorney, or Wendy Finck Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. The Company is a stock life insurance company organized under the laws of the State of Michigan in September 1992. The Company is a wholly-owned subsidiary of Jackson National Life Insurance Company and an indirect wholly-owned subsidiary of Prudential Corporation plc, London, England. The Company is currently admitted to do business in Michigan.

2. The Separate Account was established by the Company as a separate account under the laws of Michigan on June 14, 1993 as a funding medium for variable annuity contracts. The Separate Account meets the definition of a ''separate account'' under the federal securities laws and is registered under the 1940 Act as a unit investment trust. The application states that the Company will establish for each investment option offered under the Contracts a Separate Account subaccount (''Portfolio'') which will invest solely in a specific corresponding series of the JNL Series Trust or of some other designated investment company (the ''Funds''). JNL Series Trust is registered as an open-end management investment company under the 1940 Act.

3. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc., will serve as the distributor and principal underwriter for the Contracts.

4. The Contracts are flexible premium individual deferred variable annuity contracts offered in connection with retirement plans that may qualify for favorable federal income tax treatment (''Qualified Contracts'') or on a non-tax qualified basis (''Non-Qualified Contracts''). Interests in the Contracts are registered under the Securities Act of 1933. The Contracts provide for, among other things: (a) Certain minimum initial and subsequent premium payments; (b) several annuity payment options beginning on the annuity date; and (c) the payment of a death benefit where the annuitant dies during the accumulation phase, which is equal to the greater of the contract value or premium payments (net of withdrawals and premium taxes). Where permitted by state law, the Contract will also provide an enhanced

death benefit determined by (1) recomputing the standard death benefit by accumulating the total dollar amount of premiums made prior to the death of the annuitant, minus the sum of the total amount of withdrawals and premium taxes incurred, annually at 5% (4% if the annuitant was age 70 or older on the issue date) to the date of death, and (2) paying the greater of the amount so determined and the contract value at the seventh contract year, plus any premiums made since that time and before the death of the annuitant, minus the total amount of partial withdrawals and premium taxes incurred since the seventh contract year, all accumulated annually at 5% (4% if the annuitant was age 70 of older on the issue date) to the date of death. The amount determined under (2) above will equal $0 if the annuitant dies prior to the seventh contract year.

5. Various fees and charges are deducted under the Contracts. An annual Contract Maintenance Charge of $35 will be deducted prior to the annuity date, and upon a full surrender on any date other than a contract anniversary, to reimburse the Company for contract administration expenses. A daily Administration Charge, equal to an effective annual rate of 0.15% of the net assets of each Portfolio in which the contract owner has invested, will be deducted prior to the annuity date. This charge is designed to reimburse the Company for administrative expenses related to the Separate Account and the issuance and maintenance of the Contract. Currently, the Company permits fifteen free transfers among the Portfolios per contract year; however, a $25 charge will be assessed on the sixteenth and each subsequent transfer within the contract year. The Company does not expect a profit from these charges. The Company represents that it will monitor its administrative expenses and the proceeds of these charges to ensure compliance with Rule 26a–1 under the 1940 Act.

6. The Company will pay applicable premium taxes when due and reserves the right to deduct the amount of the tax either from premiums as they are received or deduct the tax at a later date as permitted or required by applicable law.

7. No sales charge is deducted from premium payments. However, certain full or partial surrenders will be subject to a maximum 7% contingent deferred sales charge (''Withdrawal Charge''), which will be imposed on a declining basis during the first seven contract years after payment of the premium being withdrawn. The Withdrawal Charge will compensate the Company for expenses relating to the distribution and sale of the Contracts. For purposes of computing the Withdrawal Charge, withdrawals will be allocated first to investment income, and then to premiums on a first-in, first-out basis so that all withdrawals are allocated to premiums to which the lowest (if any) Withdrawal Charge applies. No Withdrawal Charge may be applied to that portion of the first withdrawal in the contract year equal to 10% of premiums that remain subject to the Withdrawal Charge, less earnings in the contract owner's account. The Company may also waive the Withdrawal Charge under other circumstances permitted under the 1940 Act.

To the extent that the Withdrawal Charge is insufficient to cover all sales and distribution expenses, the Company may use any of its corporate assets, including potential profit which may arise from the mortality and expense risk charge, to make up any difference.

8. Shares of the Fund are sold to the Separate Account at net asset value. The Fund pays its investment adviser a fee for managing its investments and business affairs. The Fund is responsible for all of its other expenses.

9. A daily charge equal to an effective annual rate of 1.25% of the value of the net assets in the Separate Account will be deducted to compensate the Company for bearing certain mortality and expense risks under the Contracts. Of that amount, approximately 1.02% is for mortality risks and approximately 0.23% is for expense risks.

10. The mortality risk arises from the Company's contractual obligations: (1) To make annuity payments (determined in accordance with the annuity tables and other provisions provided in the Contracts) regardless of how long any individual annuitant or all annuitants may live, (2) to waive the Withdrawal Charge in the event of the death of the annuitant, and (3) to provide both a standard and an enhanced death benefit prior to the annuity date. The portion of the total mortality risk charge attributable to the Company's assuming the first two of those three risks and providing a standard death benefit is 0.90%; the balance of 0.12% is assessed for providing the enhanced death benefit. Applicants represent that the mortality risk charge may not be increased under the Contract.

11. The expense risk assumed by the Company is the risk that the Company's actual administrative costs will exceed the amount recovered through the administrative and policy maintenance charges. If the expense risk charge is insufficient to cover the actual cost of administering the Contracts and the Separate Account, the Company will bear the loss.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that it is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Section 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

2. Applicant request exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the 1.25% charge from the assets of the Separate Account to compensate the Company for the assumption of mortality and expense risks. Applicants further request that such exemptive relief extend to contracts that are similar in all material respects to the Contracts which may be issued in the future by the Separate Account or any other separate account established by the Company. Applicants assert that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. The Company represents that the 1.25% mortality and expense risk charge is reasonable in relation to the risks assumed by the Company under the Contracts and within the range of industry practice for comparable annuity contracts. This representation is based upon the Company's analysis of publicly available information about comparable industry products, taking into consideration such factors as current charge levels and benefits provided, the existence of expense level guarantees and guaranteed annuity rates. The Company represents that it will maintain at its home office, a memorandum, available to the Commission, setting forth in detail the products analyzed in the course of, and

the methodology and results of, its comparative review.

4. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the Withdrawal Charge. The Company represents that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and contract owners. The Company represents that the basis for conclusion is set forth in memorandum which will be maintained at its home office and will be available to the Commission upon request.

5. Applicants assert that the terms of the future relief requested wit respect to any Other Contracts are consistent with the standards set forth in Section 6(c) of the 1940 Act. Applicants submit that, if the Company were to repeatedly seek exemptive relief with respect to the same issues addressed in this application, investors would not receive additional protection or benefit. Applicants assert that the requested relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need for the filing of redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Applicants represent that both the delay and the expense of repeatedly seeking exemptive relief would impair the Company's ability to effectively take advantage of business opportunities as they arise.

6. The Company also represents that the Separate Account or future separate accounts will invest only in management investment companies which undertake, in the event they should adopt a plan under Rule 12b–1 of the 1940 Act to finance distribution expenses, to have a board of directors or trustees, a majority of whom are not ''interested persons'' of the Company within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5463 Filed 3–6–95; 8:45 am]

BILLING CODE 8010–01–M

SELECTIVE SERVICE SYSTEM

Forms Submitted to the Office of Management and Budget for Extension of Clearance

The following forms, to be used only in the event that inductions into the armed services are resumed, have been submitted to the Office of Management and Budget (OMB) for the extension of clearance in compliance with the Paperwork Reduction Act (44 U.S. Chapter 35):

SSS–254

Title: Application for Voluntary Induction.

Purpose: Is used to apply for voluntary induction into the Armed Services.

Respondents: Registrants or nonregistrants who have attained the age of 17 years, who have not attained the age of 26 years and who have not completed his active duty obligation under the Military Selective Service Act.

Frequency: One-time.

Burden: The reporting burden is twelve minutes or less per individual.

SSS–350

Title: Registrant Travel Reimbursement Request.

Purpose: Is used to request reimbursement for expenses incurred when traveling to or from a Military Entrance Processing Station in compliance with an official order issued by the Selective Service System.

Respondents: All registrants required to travel to or from a Military Entrance Processing Station at their own expense.

Frequency: One-time.

Burden: The reporting burden is ten minutes or less per request.

Copies of the above identified forms can be obtained upon written request to Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form(s) should be sent within 60 days of publication of this notice to Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Dated: February 22, 1995.

Gil Coronado,

Director.

[FR Doc. 95–5435 Filed 3–6–95; 8:45 am]

BILLING CODE 8015–01–M

SMALL BUSINESS ADMINISTRATION

Declaration of Disaster Loan Area; Alabama

Cullman and Marshall Counties and the contiguous Counties of Blount, Dekalb, Etowah, Jackson, Lawrence, Madison, Morgan, Walker and Winston in the State of Alabama constitute a disaster area as a result of damages caused by severe storms, flooding and tornadoes which occurred on February 15, 1995. Applications for loans for physical damage may be filed until the close of business on May 1, 1995 and for economic injury until the close of business on December 1, 1995 at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 276512 and for economic injury the number is 847600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: March 1, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–5549 Filed 3–6–95; 8:45 am]

BILLING CODE 8025–01–M

Declaration of Disaster Loan Area; North Carolina and Contiguous Counties in Tennessee

Watauga County and the contiguous counties of Ashe, Avery, Caldwell, and

Wilkes in the State of North Carolina, and Carter and Johnson Counties in the State of Tennessee constitute an economic injury disaster area as a result of damages caused by severe storms and flooding which occurred on January 14 and 15, 1995. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on December 1, 1995 at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, Georgia 30308

or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Date: March 1, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–5550 Filed 3–6–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

February 28, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Department Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service (CUS)

OMB Number: 1515–0072.

Form Number: CF 1302 and CF 1302A.

Type of Review: Extension.

Title: Cargo Declaration and Cargo Declaration (Outward with Commercial Forms).

Description: Customs Forms 1302 and 1302A are used by the master of a Vessel to list all inward cargo onboard and for the clearance of all cargo onboard with commercial forms.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 5,600.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 11,662 hours.

Clearance Officer: Laverne Williams (202) 927–0229, U.S. Customs Service, Printing and Records Management Branch, Room 6216, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 95–5522 Filed 3–6–95; 8:45 am]

BILLING CODE 4820–02–P

Public Information Collection Requirements Submitted to OMB for Review

March 1, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Department Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt (BPD)

OMB Number: New.

Form Number: PD F 5376 and PD F 5377.

Type of Review: New collection.

Title: 1. Transaction Request for U.S. Treasury Securities State and Local Series (5376).

2. Early Redemption Request for U.S. Treasury Securities State and Local Government Series (5377).

Description: These forms will provide a vehicle for State and Local Government entries to use for conducting accounts maintenance changes and early redemptions of their State and Local Series (SLGS) Securities.

Respondents: State, Local or Tribal Government.

Estimated Number of Respondents: 3,350.

Estimated Burden Hours Per Response:

Form and Time Per Response

PD F 5376—30 minutes
PD F 5377—30 minutes

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,675 hours.

Clearance Officer: Vicki S. Ott (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 95–5523 Filed 3–6–95; 8:45 am]

BILLING CODE 4810–40–P

Public Information Collection Requirements Submitted to OMB for Review

March 1, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0582.

Form Number: IRS Form 1139.

Type of Review: Revision.

Title: Corporation Application for Tentative Refund.

Description: Form 1139 is filed by corporations that expect to have a net operating loss, net capital loss, or unused general business credits carried back to a prior tax year. IRS uses Form 1139 to determine if the amount of the loss or unused credits is reasonable.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 3,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—25 hr., 7 min.

Learning about the law or the form—

3 hr., 20 min.
Preparing the form—8 hr., 32 min.
Copying, assembling, and sending the form to the IRS—1 hr., 20 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 114,960 hours.

OMB Number: 1545–0757.

Regulation ID Number: LR–209–76 Final.

Type of Review: Extension.

Title: Special Lien for Estate Taxes Deferred Under Section 6166 or 6166A; Procedure and Administration.

Description: Section 6324A permits the executor of a decedent's estate to elect a lien on section 6166 property in favor of the United States in lieu of a bond or personal liability if an election under section 6166 was made and the executor files an agreement under section 6324A(c).

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 34,600

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Other.

Estimated Total Reporting Burden: 8,650 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 95–5524 Filed 3–6–95; 8:45 am]

BILLING CODE: 4830–01–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 44
Tuesday, March 7, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, March 13, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 3, 1995

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–5700 Filed 3–3–95; 3:43 pm]

BILLING CODE 6210–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Meeting of the Board of Directors

TIME AND DATE: 10:00 a.m., Friday, March 17, 1995.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, N.W., Suite 800, Board Room, Washington, D.C. 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary, 202/376–2441.

AGENDA:

I. Call to Order
II. Approval of Minutes:
  December 16, 1994
III. Audit Committee Report:
  February 22, 1995, Meeting
  a. Receive FY 1994 Audit Report from Outside Auditors
  b. Selection of Outside Auditors
  c. Proposed Revisions to the Corporate Investment Policy
IV. Budget Committee Report:
  February 23, 1995, Meeting
  a. Proposed FY 1995 Budget Revisions
V. Treasurer's Report
VI. Executive Director's Quarterly Management Report
VII. Adjourn

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 95–5649 Filed 3–3–95; 12:38 pm]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 6, 13, 20, and 27, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 6

Thursday, March 9

2:00 p.m.
  Briefing on Performance Indicators in Materials Performance Evaluation Program (Public Meeting)
  (Contact: George Pangburn, 301–415–7266)
3:30 p.m.
  Affirmative/Discussion and Vote (Public Meeting)
  (Please Note: This item will be affirmed immediately following the conclusion of the preceding meeting.)
  a. Sequoyah Fuels Corporation—Intervenors' Petition for Review of the Presiding Officer's Order LBP–93–25 (Tentative)
  (Contact: Andrew Bates, 301–415–1963)

Week of March 13—Tenative

Tuesday, March 14

10:00 a.m.
  Briefing on Investigative Matters (Closed—Ex. 5 and 7)

Wednesday, March 15

2:00 p.m.
  Briefing on Proposed Changes to NRC Fee Rule (Public Meeting)
  (Contact: Jesse Funches, 301–415–7322)
3:30 p.m.
  Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 20—Tenative

Wednesday, March 22

10:00 a.m.
  Briefing on Status of Action Plan for Fuel Cycle Facilities (Public Meeting)
  (Contact: John Hickey, 301–415–7192)
11:30 a.m.
  Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 27—Tentative

Tuesday, March 28

2:00 p.m.
  Briefing on Status of Reactor Regulatory Reform Initiatives (Public Meeting)
  (Contact: Gene Imbro, 301–415–2969)

Wednesday, March 29

10:00 a.m.
  Briefing by National Academy of Sciences on Status of Independent Review of Medical Use Program (Public Meeting)
  (Contact: Pat Rathbun, 301–415–7178)
2:00 p.m.
  Briefing on Lessons Learned from Enhanced Participatory Rulemakings (Public Meeting)
  (Contact/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system will also become available in the near future. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: March 3, 1995.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 95–5685 Filed 3–3–95; 3:10 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 60, No. 44
Tuesday, March 7, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 5-95]

Proposed Foreign-Trade Zone—Olympia/South Puget Sound Area, WA (Port of Olympia Customs Port of Entry Area); Application and Public Hearing

Correction

In notice document 95–4633 appearing on page 10352 in the issue of Friday, February 24, 1995, make the following corrections:

On page 10352,in the second column, in the fourth full paragraph, beginning in the seventh line, ''[60 days from date of publication]'' should read ''April 25, 1995''; and in the last line, ''[75 days from date of publication]).'' should read ''[May 10, 1995]).''

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 925

RIN 0648-AC63

Olympic Coast National Marine Sanctuary Regulations

Correction

In rule document 95–4025 beginning on page 9294 in the issue of Friday, February 17, 1995, make the following corrections:

Appendix A to Part 925 [Corrected]

On page 9294, in Appendix A to Part 925, in the table, in the third column, the first three digits of the Longitude for Point(s) 3, 4, 5 and 6 now reading ''124'' should read ''125''.

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 940953-4347; I.D. 081594A]
RIN 0648-AE52

Snapper-Grouper Fishery Off the Southern Atlantic States

Correction

In rule document 94–31421 beginning on page 66270, in the issue of Friday, December 23, 1994, make the following correction:

§646.7 [Corrected]

On page 66274, in the third column, in §646.7 (pp) (i), (ii), (iii) were designated incorrectly and the paragraphs should read ''(1), (2), (3)''.

BILLING CODE 1505–01–D

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

Correction

In notice document 95–4136 beginning on page 9688 in the issue of Tuesday, February 21, 1995, make the following corrections:

1. On page 9688:

a. In the first column, under *1.*, the *OMB Docket number:* should read ''7100-0055''.

b. In the second column, under *2.*, the *OMB Docket number:* should read ''7100-0224''.

c. In the third column:

(i) Under *3.*, the *Agency form number:* should read ''FR MSD-4, MSD-5''; the *OMB Docket number:* should read ''7100-0100, 7100-0101''; and in the *Abstract*, in the last line, insert ''4'' after ''FR MSD-''.

(ii) Under *4.*, the *Agency form number:* should read ''FR TA-1'', and the *OMB Docket number:* should read ''7100-0099''.

2. On page 9689, in the first column, under *1.*, the *OMB Docket number* should read ''7100-0137''.

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7100

[WY-930-1430-01; WYW-83357]

Partial Revocation of Secretarial Orders of October 20, 1917, May 6, 1918, May 16, 1918, August 28, 1934, and July 12, 1939; Wyoming

Correction

In rule document 94–27690 beginning on page 55820, in the issue of Wednesday, November 9, 1994, make the following correction:

On page 55821, in the first column, in the land description, in the first line, ''Sec. 31, lots 1 to 4, inclusive, E½, and E½W¼.'' should read ''Sec. 31, lots 1 to 4, inclusive, E½, and E½W½.''.

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Examination of Working Places

Correction

In notice document 95–4341 beginning on page 9987 in the issue of Wednesday, February 22, 1995, in the second column, under **DATES**, in the second line, ''April 1, 1995'' should read ''April 10, 1995''.

BILLING CODE 1505–01–D

federal register

Tuesday
March 7, 1995

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 888

Section 8 Housing Assistance Payment Programs: Contract Rent Annual Adjustment Factors; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 888

[Docket No. N–95–3875; FR–3807–N–01]

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of revised contract rent annual adjustment factors.

SUMMARY: The United States Housing Act of 1937 requires that the assistance contracts signed by owners participating in the Department's Section 8 Housing Assistance Payments programs provide for annual or more frequent adjustment in the maximum monthly rentals for units covered by the contract to reflect changes based on fair market rents prevailing in a particular market area, or on a reasonable formula. This notice announces revised Annual Adjustment Factors (AAFs), which are based on a formula using data on residential rent and utilities cost changes from the Bureau of Labor Statistics Consumer Price Index (CPI) and the HUD Random Digit Dialing (RDD) rent change surveys.

EFFECTIVE DATE: March 7, 1995.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Rental Assistance Division, Office of Public and Indian Housing [(202) 708–0477 (TDD) or (202) 708–0850 (voice)], for questions relating to the Section 8 Voucher, Certificate, and Moderate Rehabilitation programs; Barbara Hunter, Program Planning Division, Office of Multifamily Housing Management [(202) 708–3944 (TDD) or (202) 708–4594 (voice)], for questions relating to all other Section 8 programs; for technical information regarding the development of the schedules for specific areas or the method used for calculating the AAFs, Michael R. Allard, Economic and Market Analysis Division, Office of Policy Development and Research [(202) 708–0577 (TDD) or (202) 708–0770 (voice)]. Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. (The above-listed telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development Appropriations Act, 1995 (Pub. L. 103–327, approved September 28, 1994) provides that, ''For any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0″. Schedule C, tables 1 and 2 contain separate AAFs for a unit occupied by the same family at the last annual adjustment (Table 2), and for a unit occupied by a new family since the last annual adjustment since (Table 1).

The revised AAFs are applicable for adjusting Contract Rents for contract anniversaries falling on or after November 8, 1994, the anniversary date for publication of a new annual adjustment factor.

Applicability of AAFs to Various Section 8 Programs

In general, AAFs established by this Notice are used to adjust Contract Rents for Section 8 Housing Assistance Payments Program units. However, the specific application of the AAFs should be determined by reference to the HAP Contract and to appropriate program regulations or requirements.

AAFs are not used for the Section 8 Voucher program. Contract Rents for many projects receiving Section 8 subsidies under the Loan Management provisions of 24 CFR part 886, subpart A, and for projects receiving Section 8 subsidies under the Property Disposition provisions of 24 CFR part 886, subpart C, are adjusted, at HUD's option, either by applying the AAFs or by adjusting rents in accordance with 24 CFR 207.19(e).

Under the Section 8 Moderate Rehabilitation program, the public housing agency (PHA) applies the AAF to the base rent, not the Contract Rent.

AAF Tables

The AAFs for FY 1995 are contained in Schedule C, tables 1 and 2 of this notice.

AAF Areas

With several exceptions discussed below, the AAFs shown in Schedule C use the Office of Management and Budget's (OMB) most current definitions of metropolitan areas. HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions for AAF areas because they closely correspond to housing market area definitions.

The exceptions are for six large metropolitan areas, where HUD considers the area covered by the OMB definitions to be larger than appropriate for use as a housing market area definition. HUD therefore modified the definitions for these areas by deleting some of the counties that OMB had added to its revised definitions. The following counties are deleted from the HUD definitions of AAF areas:

Metropolitan Area Deleted Counties

Atlanta, GA—Carroll, Pickens, and Walton Counties.
Chicago, IL—DeKalb, Grundy and Kendall Counties.
Cincinnati-Hamilton, OH-KY-IN—Brown County, Ohio; Gallatin, Grant and Pendleton Counties in Kentucky; and Ohio County, Indiana.
Dallas, TX—Henderson County.
New Orleans, LA—St. James Parish.
Washington, DC—Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George and Warren counties in Virginia.

Separate AAFs are listed in this publication for the above counties. They and the metropolitan area of which they are a part are identified with an asterisk (*) next to the area name. The asterisk denotes that there is a difference between the OMB metropolitan area and the HUD AAF area definitions for these areas.

Based on an evaluation of information submitted by local officials, HUD has determined that Spalding County is part of the Atlanta housing market area. Program units in Spalding County, therefore, will use the Atlanta, GA AAFs.

Each AAF applies to a specified geographical area and to units of all bedroom sizes. AAFs are provided for the metropolitan parts (exclusive of CPI areas) and the nonmetropolitan parts of the ten HUD regions, which, under HUD's reorganization plan have been renamed and are referred to as follows:

Region I (Boston) is now New England
Region II (New York) is now New York/New Jersey
Region III (Philadelphia) is now the Mid-Atlantic
Region IV (Atlanta) is now the Southeast
Region V (Chicago) is now the Midwest
Region VI (Fort Worth) is now the Southwest
Region VII (Kansas City) is now the Great Plains
Region VIII (Denver) is now Rocky Mountain
Region IX (San Francisco) is now Pacific/Hawaii
Region X (Seattle) is now Northwest/Alaska

AAFs, developed from local CPI surveys, also are provided for 103 separate metropolitan AAF areas.

Program participants should refer to the area definitions section at the end of

Schedule C to make certain that they are using the correct AAFs. Units located in metropolitan areas with a local CPI survey must use the corresponding AAFs listed separately for those metropolitan areas. Units that are located in areas without a local CPI survey must use the appropriate HUD regional Metropolitan or Nonmetropolitan AAFs.

The AAF area definitions shown in Schedule C are listed in alphabetical order by State. The associated HUD region is shown next to each State name. Areas whose AAFs are determined by local CPI surveys are listed first. All CPI defined areas have separate AAF schedules and are shown with their corresponding county definitions or as metropolitan counties. Listed after the CPI defined areas (in those states that have such areas) are the metropolitan and nonmetropolitan counties of each State. In the six New England States, the listings are for counties or parts of counties as defined by towns or cities.

Puerto Rico and the Virgin Islands use the Southeast AAFs. All areas in Hawaii use the AAFs identified in the table as STATE: Hawaii, which are based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands use the Pacific/Hawaii Nonmetropolitan AAFs. The Anchorage metropolitan area uses the AAFs based on the local CPI survey. All other areas in Alaska use the Northwest/Alaska Nonmetropolitan AAFs. Reflecting a decrease in the local CPI survey, the AAFs for the San Diego, CA MSA are shown as 1.00.

Section 8 Certificate Program AAFs for Manufactured Home Spaces

The AAFs in this publication identified as ''Highest Cost Utility Excluded'' are to be used for updating manufactured home space contract rents. The applicable AAF is determined by reference to the geographic listings contained in Schedule C, as described in the preceding section.

Retroactivity

Retroactivity is permitted to avoid any detriment to owners because of HUD's delay in the annual publication of the factors, as required by 24 CFR 888.202. Owners of Section 8 units (other than units assisted under the Section 8 Certificate, Moderate Rehabilitation, regular and SRO, Project-based Assistance Certificates, and FmHA programs) who have HAP Contracts with anniversary dates falling on November 8, 1994 through March 7, 1995 may request that the AAFs be applied retroactively to the anniversary date of their HAP Contracts.

The AAFs are not applied retroactively for units assisted under the Section 8 Certificate, Moderate Rehabilitation (both regular and SRO), Project-based Assistance Certificates, and the FmHA programs. The annual adjustments for these units are determined as of any anniversary date using the AAFs most recently published in the Federal Register (see 24 CFR 882.108(a)(1)(i) and 884.109(b)(2)).

RDD Factors

HUD uses the RDD regional surveys for calculating AAFs. The RDD survey method is based on a sampling procedure that uses computers to select a statistically random sample of rental housing, dial and keep track of the telephone calls and process the responses. RDD surveys are conducted to determine the rent change factors for the metropolitan parts (exclusive of CPI areas) and nonmetropolitan parts of the 10 HUD regions, a total of 20 surveys.

AAF Formula

The formula for calculating the AAFs for each area is as follows:

For areas with CPI surveys: (1) Changes in the shelter rent and utilities components were calculated based on the most recent CPI annual average change data; (2) the shelter rent factor was calculated by eliminating the effect of heating costs that are included in the rent of some of the units included in the CPI surveys; and (3) the gross rent factors were calculated by weighing the rent and utility components with the 1990 Census corresponding components.

For areas using RDD surveys: (1) The change in gross rent was calculated using the most recent RDD survey median gross rent for the respective metropolitan or nonmetropolitan parts of the HUD region; and (2) the change in shelter rent was calculated by subtracting median value of utilities costs from the median gross rent. The median cost of utilities was determined from the units in the RDD sample reporting that all utilities were paid by the tenant.

Other Matters

An environmental assessment is unnecessary, since revising Annual Adjustment Factors is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.200(l).

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this Notice do not have federalism implications and, thus, are not subject to review under the Order. The Notice merely announces the adjustment factors to be used to adjust contract rents in the Section 8 Housing Assistance Payment programs, as required by the United States Housing Act of 1937.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has also determined that this Notice does not have potential significant impact on family formation, maintenance, and general well-being and, thus, is not subject to review under the Order. The Notice merely announces the adjustment factors to be used to adjust contract rents in the Section 8 Housing Assistance Payment programs, as required by the United States Housing Act of 1937.

The Catalog of Federal Domestic Assistance program number for Lower Income Housing Assistance programs (Section 8) is 14.156.

Accordingly, the Department publishes these Contract Rent Annual Adjustment Factors for the Section 8 Housing Assistance Payments Program as set forth in the following tables:

Dated: February 7, 1995.

Henry Cisneros,

Secretary

BILLING CODE 4210–32–P

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS FOR UNITS WITH TURNOVER, ~~SECTION 8 HAP PROGRAMS~~ PREPARED ON 013095

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
New England Metropolitan	1.015	1.015	New England Nonmetropolitan	1.008	1.005
New York/New Jersey Metropolitan	1.013	1.006	New York/New Jersey Nonmetropolitan	1.024	1.024
Mid-Atlantic Metropolitan	1.018	1.015	Mid-Atlantic Nonmetropolitan	1.020	1.012
Southeast Metropolitan	1.016	1.013	Southeast Nonmetropolitan	1.014	1.000
Midwest Metropolitan	1.029	1.030	Midwest Nonmetropolitan	1.014	1.003
Southwest Metropolitan	1.038	1.039	Southwest Nonmetropolitan	1.014	1.002
Great Plains Metropolitan	1.030	1.028	Great Plains Nonmetropolitan	1.022	1.022
Rocky Mountain Metropolitan	1.062	1.067	Rocky Mountain Nonmetropolitan	1.014	1.013
Pacific/Hawaii Metropolitan	1.018	1.016	Pacific/Hawaii Nonmetropolitan	1.014	1.011
Northwest/Alaska Metropolitan	1.038	1.040	Northwest/Alaska Nonmetropolitan	1.023	1.022
STATE Hawaii	1.037	1.032	PMSA Akron, OH	1.028	1.025
MSA Anchorage, AK	1.047	1.046	PMSA Ann Arbor, MI	1.022	1.025
*Atlanta, GA	1.029	1.025	PMSA Atlantic-Cape May, NJ	1.013	1.016
PMSA Baltimore, MD	1.024	1.024	PMSA Bergen-Passaic, NJ	1.027	1.025
*COUNTY Berkeley, WV	1.011	1.001	PMSA Boston, MA-NH	1.010	1.004
PMSA Boulder-Longmont, CO	1.068	1.074	PMSA Brazoria, TX	1.031	1.032
PMSA Bremerton, WA	1.024	1.020	PMSA Bridgeport, CT	1.027	1.025
PMSA Brockton, MA	1.010	1.004	*COUNTY Brown, OH	1.026	1.011
PMSA Buffalo-Niagara Falls, NY	1.037	1.028	*COUNTY Carroll, GA	1.031	1.025
*Chicago, IL	1.025	1.021	*Cincinnati, OH-KY-IN	1.021	1.013
*COUNTY Clarke, VA	1.010	1.002	PMSA Cleveland-Lorain-Elyria, OH	1.028	1.025

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS FOR UNITS WITH TURNOVER, SECTION 8 HAP PROGRAMS

PREPARED ON 013095

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
*COUNTY Culpeper, VA	1.010	1.002
PMSA Danbury, CT	1.027	1.025
PMSA Denver, CO	1.066	1.074
PMSA Dutchess County, NY	1.027	1.025
PMSA Flint, MI	1.021	1.026
PMSA Fort Worth-Arlington, TX	1.023	1.022
PMSA Galveston-Texas City, TX	1.031	1.032
*COUNTY Grant, KY	1.026	1.011
*COUNTY Grundy, IL	1.027	1.020
PMSA Hamilton-Middletown, OH	1.022	1.013
PMSA Houston, TX	1.031	1.032
PMSA Jersey City, NJ	1.027	1.025
MSA Kansas City, MO-KS	1.024	1.019
PMSA Kenosha, WI	1.026	1.020
PMSA Lawrence, MA-NH	1.011	1.004
PMSA Lowell, MA-NH	1.010	1.004
PMSA Miami, FL	1.039	1.042
PMSA Milwaukee-Waukesha, WI	1.028	1.025
PMSA Monmouth-Ocean, NJ	1.027	1.025
PMSA Nassau-Suffolk, NY	1.027	1.025
PMSA New Haven-Meriden, CT	1.027	1.025

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
*Dallas, TX	1.023	1.022
*COUNTY De Kalb, IL	1.026	1.021
PMSA Detroit, MI	1.021	1.026
PMSA Fitchburg-Leominster, MA	1.010	1.004
PMSA Fort Lauderdale, FL	1.039	1.042
*COUNTY Gallatin, KY	1.027	1.010
PMSA Gary, IN	1.027	1.019
PMSA Greeley, CO	1.067	1.074
PMSA Hagerstown, MD	1.010	1.002
*COUNTY Henderson, TX	1.024	1.022
*COUNTY Jefferson, WV	1.011	1.001
PMSA Kankakee, IL	1.028	1.019
*COUNTY Kendall, Il	1.026	1.021
*COUNTY King George, VA	1.011	1.001
PMSA Los Angeles-Long Beach, CA	1.004	1.002
PMSA Manchester, NH	1.010	1.004
PMSA Middlesex-Somerset-Hunterdon, NJ	1.027	1.025
MSA Minneapolis-St. Paul, MN-WI	1.018	1.013
PMSA Nashua, NH	1.010	1.004
PMSA New Bedford, MA	1.010	1.004
*New Orleans, LA	1.040	1.035

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS FOR UNITS WITH TURNOVER, SECTION 8 HAP PROGRAMS

PREPARED ON 013095

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
PMSA New York, NY	1.026	1.026	*COUNTY Westchester, NY	1.026	1.026
PMSA Newark, NJ	1.027	1.025	PMSA Newburgh, NY-PA	1.027	1.025
PMSA Oakland, CA	1.026	1.027	*COUNTY Ohio, IN	1.025	1.011
PMSA Olympia, WA	1.024	1.020	PMSA Orange County, CA	1.003	1.002
*COUNTY Pendleton, KY	1.025	1.011	PMSA Philadelphia, PA-NJ	1.013	1.017
*COUNTY Pickens, GA	1.032	1.025	PMSA Pittsburgh, PA	1.024	1.028
PMSA Portland-Vancouver, OR-WA	1.036	1.036	PMSA Portsmouth-Rochester, NH-ME	1.010	1.004
PMSA Racine, WI	1.028	1.025	PMSA Riverside-San Bernardino, CA	1.005	1.002
*COUNTY St. James Parish, LA	1.042	1.035	MSA St. Louis, MO-IL	1.017	1.016
PMSA Salem, OR	1.037	1.036	MSA San Diego, CA	1.000	1.000
PMSA San Francisco, CA	1.026	1.027	PMSA San Jose, CA	1.026	1.027
PMSA Santa Cruz-Watsonville, CA	1.026	1.027	PMSA Santa Rosa, CA	1.026	1.027
PMSA Seattle-Bellevue-Everett, WA	1.023	1.021	PMSA Stamford-Norwalk, CT	1.027	1.025
PMSA Tacoma, WA	1.023	1.021	MSA Tampa-St. Petersburg-Clearwater, FL	1.029	1.028
PMSA Trenton, NJ	1.027	1.025	PMSA Vallejo-Fairfield-Napa, CA	1.026	1.027
PMSA Ventura, CA	1.004	1.002	PMSA Vineland-Millville-Bridgeton, NJ	1.013	1.017
*COUNTY Walton, GA	1.031	1.025	*COUNTY Warren, VA	1.010	1.002
*Washington, DC-MD-VA	1.008	1.004	PMSA Waterbury, CT	1.027	1.025
PMSA Wilmington-Newark, DE-MD	1.014	1.016	PMSA Worcester, MA-CT	1.010	1.004

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS FOR UNITS WITH NO TURNOVER, SECTION 8 HAP PROGRAMS

PREPARED ON 013095

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
New England Metropolitan	1.005	1.005	New England Nonmetropolitan	1.000	1.000
New York/New Jersey Metropolitan	1.003	1.000	New York/New Jersey Nonmetropolitan	1.014	1.014
Mid-Atlantic Metropolitan	1.008	1.005	Mid-Atlantic Nonmetropolitan	1.010	1.002
Southeast Metropolitan	1.006	1.003	Southeast Nonmetropolitan	1.004	1.000
Midwest Metropolitan	1.019	1.020	Midwest Nonmetropolitan	1.004	1.000
Southwest Metropolitan	1.028	1.029	Southwest Nonmetropolitan	1.004	1.000
Great Plains Metropolitan	1.020	1.018	Great Plains Nonmetropolitan	1.012	1.012
Rocky Mountain Metropolitan	1.052	1.057	Rocky Mountain Nonmetropolitan	1.004	1.003
Pacific/Hawaii Metropolitan	1.008	1.006	Pacific/Hawaii Nonmetropolitan	1.004	1.001
Northwest/Alaska Metropolitan	1.028	1.030	Northwest/Alaska Nonmetropolitan	1.013	1.012
STATE Hawaii	1.027	1.022	PMSA Akron, OH	1.018	1.015
MSA Anchorage, AK	1.037	1.036	PMSA Ann Arbor, MI	1.012	1.015
*Atlanta, GA	1.019	1.015	PMSA Atlantic-Cape May, NJ	1.003	1.006
PMSA Baltimore, MD	1.014	1.014	PMSA Bergen-Passaic, NJ	1.017	1.015
*COUNTY Berkeley, WV	1.001	1.000	PMSA Boston, MA-NH	1.000	1.000
PMSA Boulder-Longmont, CO	1.058	1.064	PMSA Brazoria, TX	1.021	1.022
PMSA Bremerton, WA	1.014	1.010	PMSA Bridgeport, CT	1.017	1.015
PMSA Brockton, MA	1.000	1.000	*COUNTY Brown, OH	1.016	1.001
PMSA Buffalo-Niagara Falls, NY	1.027	1.018	*COUNTY Carroll, GA	1.021	1.015
*Chicago, IL	1.015	1.011	*Cincinnati, OH-KY-IN	1.011	1.003
*COUNTY Clarke, VA	1.000	1.000	PMSA Cleveland-Lorain-Elyria, OH	1.018	1.015

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS FOR UNITS WITH NO TURNOVER, SECTION 8 HAP PROGRAMS

PREPARED ON 013095

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
*COUNTY Culpeper, VA	1.000	1.000
PMSA Danbury, CT	1.017	1.015
PMSA Denver, CO	1.056	1.064
PMSA Dutchess County, NY	1.017	1.015
PMSA Flint, MI	1.011	1.016
PMSA Fort Worth-Arlington, TX	1.013	1.012
PMSA Galveston-Texas City, TX	1.021	1.022
*COUNTY Grant, KY	1.016	1.001
*COUNTY Grundy, IL	1.017	1.010
PMSA Hamilton-Middletown, OH	1.012	1.003
PMSA Houston, TX	1.021	1.022
PMSA Jersey City, NJ	1.017	1.015
MSA Kansas City, MO-KS	1.014	1.009
PMSA Kenosha, WI	1.016	1.010
PMSA Lawrence, MA-NH	1.001	1.000
PMSA Lowell, MA-NH	1.000	1.000
PMSA Miami, FL	1.029	1.032
PMSA Milwaukee-Waukesha, WI	1.018	1.015
PMSA Monmouth-Ocean, NJ	1.017	1.015
PMSA Nassau-Suffolk, NY	1.017	1.015
PMSA New Haven-Meriden, CT	1.017	1.015

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
*Dallas, TX	1.013	1.012
*COUNTY De Kalb, IL	1.016	1.011
PMSA Detroit, MI	1.011	1.016
PMSA Fitchburg-Leominster, MA	1.000	1.000
PMSA Fort Lauderdale, FL	1.029	1.032
*COUNTY Gallatin, KY	1.017	1.000
PMSA Gary, IN	1.017	1.009
PMSA Greeley, CO	1.057	1.064
PMSA Hagerstown, MD	1.000	1.000
*COUNTY Henderson, TX	1.014	1.012
*COUNTY Jefferson, WV	1.001	1.000
PMSA Kankakee, IL	1.018	1.009
*COUNTY Kendall, Il	1.016	1.011
*COUNTY King George, VA	1.001	1.000
PMSA Los Angeles-Long Beach, CA	1.000	1.000
PMSA Manchester, NH	1.000	1.000
PMSA Middlesex-Somerset-Hunterdon, NJ	1.017	1.015
MSA Minneapolis-St. Paul, MN-WI	1.008	1.003
PMSA Nashua, NH	1.000	1.000
PMSA New Bedford, MA	1.000	1.000
*New Orleans, LA	1.030	1.025

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS FOR UNITS WITH NO TURNOVER, SECTION 8 HAP PROGRAMS

PREPARED ON 013095

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
PMSA New York, NY	1.016	1.016
PMSA Newark, NJ	1.017	1.015
PMSA Oakland, CA	1.016	1.017
PMSA Olympia, WA	1.014	1.010
*COUNTY Pendleton, KY	1.015	1.001
*COUNTY Pickens, GA	1.022	1.015
PMSA Portland-Vancouver, OR-WA	1.026	1.026
PMSA Racine, WI	1.018	1.015
*COUNTY St. James Parish, LA	1.032	1.025
PMSA Salem, OR	1.027	1.026
PMSA San Francisco, CA	1.016	1.017
PMSA Santa Cruz-Watsonville, CA	1.016	1.017
PMSA Seattle-Bellevue-Everett, WA	1.013	1.011
PMSA Tacoma, WA	1.013	1.011
PMSA Trenton, NJ	1.017	1.015
PMSA Ventura, CA	1.000	1.000
*COUNTY Walton, GA	1.021	1.015
*Washington, DC-MD-VA	1.000	1.000
PMSA Wilmington-Newark, DE-MD	1.004	1.006

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
*COUNTY Westchester, NY	1.016	1.016
PMSA Newburgh, NY-PA	1.017	1.015
*COUNTY Ohio, IN	1.015	1.001
PMSA Orange County, CA	1.000	1.000
PMSA Philadelphia, PA-NJ	1.003	1.007
PMSA Pittsburgh, PA	1.014	1.018
PMSA Portsmouth-Rochester, NH-ME	1.000	1.000
PMSA Riverside-San Bernardino, CA	1.000	1.000
MSA St. Louis, MO-IL	1.007	1.006
MSA San Diego, CA	1.000	1.000
PMSA San Jose, CA	1.016	1.017
PMSA Santa Rosa, CA	1.016	1.017
PMSA Stamford-Norwalk, CT	1.017	1.015
MSA Tampa-St. Petersburg-Clearwater, FL	1.019	1.018
PMSA Vallejo-Fairfield-Napa, CA	1.016	1.017
PMSA Vineland-Millville-Bridgeton, NJ	1.003	1.007
*COUNTY Warren, VA	1.000	1.000
PMSA Waterbury, CT	1.017	1.015
PMSA Worcester, MA-CT	1.000	1.000

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

ALABAMA (SOUTHEAST)

METROPOLITAN COUNTIES
Autauga, Baldwin, Blount, Calhoun, Colbert, Dale, Elmore, Etowah, Houston, Jefferson, Lauderdale, Lawrence, Limestone, Madison, Mobile, Montgomery, Morgan, Russell, Shelby, St. Clair, Tuscaloosa

NONMETROPOLITAN COUNTIES
Barbour, Bibb, Bullock, Butler, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dallas, Dekalb, Escambia, Fayette, Franklin, Geneva, Greene, Hale, Henry, Jackson, Lamar, Lee, Lowndes, Macon, Marengo, Marion, Marshall, Monroe, Perry, Pickens, Pike, Randolph, Sumter, Talladega, Tallapoosa, Walker, Washington, Wilcox, Winston

ALASKA (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES
MSA Anchorage, AK: Anchorage

NONMETROPOLITAN COUNTIES
Aleutian East, Aleutian West, Bethel, Dillingham, Lake & Peninsula, Northwest Arctic, Nome, Pr.Wales-Outer Ketchikan, Skagway-Yakutat-Angoon, Southeast Fairbanks, Valdez-Cordova, Wade Hampton, Wrangell-Petersburg, Yukon-Koyukuk, Bristol Bay, Fairbanks North Star, Haines, Juneau, Kenai Peninsula, Ketchikan Gateway, Kodiak Island, Matanuska-Susitna, North Slope, Sitka

ARIZONA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES
Maricopa, Mohave, Pima, Pinal, Yuma

NONMETROPOLITAN COUNTIES
Apache, Cochise, Coconino, Gila, Graham, Greenlee, La Paz, Navajo, Santa Cruz, Yavapai

ARKANSAS (SOUTHWEST)

METROPOLITAN COUNTIES
Benton, Crawford, Crittenden, Faulkner, Jefferson, Lonoke, Miller, Pulaski, Saline, Sebastian, Washington

NONMETROPOLITAN COUNTIES
Arkansas, Ashley, Baxter, Boone, Bradley, Calhoun, Carroll, Chicot, Clark, Clay, Cleburne, Cleveland, Columbia, Conway, Craighead, Cross, Dallas, Desha, Drew, Franklin, Fulton, Garland, Grant, Greene, Hempstead, Hot Spring, Howard, Independence, Izard, Jackson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Little River, Logan, Madison, Marion, Mississippi, Monroe, Montgomery, Nevada, Newton Ouachita, Perry, Phillips, Pike, Poinsett, Polk, Pope, Prairie, Randolph, Scott, Searcy, Sevier, Sharp, St. Francis, Stone, Union, Van Buren, White, Woodruff, Yell

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

CALIFORNIA (PACIFIC/HAWAII)

CPI AREAS: COUNTIES
PMSA Los Angeles-Long Beach, CA: Los Angeles
PMSA Oakland, CA: Alameda, Contra Costa
PMSA Orange County, CA: Orange
PMSA Riverside-San Bernardino, CA: Riverside, San Bernardino
MSA San Diego, CA: San Diego
PMSA San Francisco, CA: Marin, San Francisco, San Mateo
PMSA San Jose, CA: Santa Clara
PMSA Santa Cruz-Watsonville, CA: Santa Cruz
PMSA Santa Rosa, CA: Sonoma
PMSA Vallejo-Fairfield-Napa, CA: Napa, Solano
PMSA Ventura, CA: Ventura

METROPOLITAN COUNTIES
Butte, El Dorado, Fresno, Kern, Madera, Merced, Monterey, Placer, Sacramento, San Joaquin, San Luis Obispo, Santa Barbara, Shasta, Stanislaus, Sutter, Tulare, Yolo, Yuba

NONMETROPOLITAN COUNTIES
Alpine, Amador, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Imperial, Inyo, Kings, Lake, Lassen, Mariposa, Mendocino, Modoc, Mono, Nevada, Plumas, San Benito, Sierra, Siskiyou, Tehama, Trinity, Tuolumne

COLORADO (ROCKY MOUNTAIN)

CPI AREAS: COUNTIES
PMSA Boulder-Longmont, CO: Boulder
PMSA Denver, CO: Adams, Arapahoe, Denver, Douglas, Jefferson
PMSA Greeley, CO: Weld

METROPOLITAN COUNTIES
El Paso, Larimer, Pueblo

NONMETROPOLITAN COUNTIES
Alamosa, Archuleta, Baca, Bent, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Dolores, Eagle, Elbert, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Kiowa, Kit Carson, La Plata, Lake, Las Animas, Lincoln, Logan, Mesa, Mineral, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Park, Phillips, Pitkin, Prowers, Rio Blanco, Rio Grande Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, Teller, Washington, Yuma

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

CONNECTICUT (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Bridgeport, CT
Fairfield County part: Bridgeport town, Easton town, Fairfield town, Monroe town, Shelton town, Stratford town, Trumbull town
New Haven County part: Ansonia town, Beacon Falls town, Derby town, Milford town, Oxford town, Seymour town

PMSA Danbury, CT
Fairfield County part: Bethel town, Brookfield town, Danbury town, New Fairfield town, Newtown town, Redding town, Ridgefield town, Sherman town
Litchfield County part: Bridgewater town, New Milford town, Roxbury town, Washington town

PMSA New Haven-Meriden, CT
Middlesex County part: Clinton town, Killingworth town
New Haven County part: Bethany town, Branford town, Cheshire town, East Haven town, Guilford town, Hamden town, Madison town, Meriden town, New Haven town, North Branford town, North Haven town, Orange town, Wallingford town, North Haven town, Woodbridge town

PMSA Stamford-Norwalk, CT
Fairfield County part: Darien town, Greenwich town, New Canaan town, Norwalk town, Stamford town, Weston town, Westport town, Wilton town

PMSA Waterbury, CT
Litchfield County part: Bethlehem town, Thomaston town, Watertown town, Woodbury town
New Haven County part: Middlebury town, Naugatuck town, Prospect town, Southbury town, Waterbury town, Wolcott town

PMSA Worcester, MA-CT
Windham County part: Thompson town

METROPOLITAN COUNTIES
Hartford County part: Avon town, Berlin town, Bloomfield town, Bristol town, Burlington town, Canton town, East Granby town, East Hartford town, East Windsor town, Enfield town, Farmington town, Glastonbury town, Granby town, Hartford town, Manchester town, Marlborough town, New Britain town, Newington town, Plainville town, Rocky Hill town, Simsbury town, Southington town, South Windsor town, Suffield town, West Hartford town, Wethersfield town, Windsor town, Windsor Locks town

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

CONNECTICUT (NEW ENGLAND) cont.

Litchfield County part: Barkhamsted town, Harwinton town, New Hartford town, Plymouth town, Winchester town
Middlesex County part: Cromwell town, Durham town, East Haddam town, East Hampton town, Haddam town, Middlefield town, Middletown town, Portland town, Old Saybrook town
New London County part: Bozrah town, East Lyme town, Franklin town, Griswold town, Groton town, Ledyard town, Lisbon town, Montville town, New London town, North Stonington town, Norwich town, Old Lyme town, Preston town Salem town, Sprague town, Stonington town, Waterford town
New London County part: Colchester town, Lebanon town
Tolland County part: Andover town, Bolton town, Columbia town, Coventry town, Ellington town, Hebron town, Mansfield town, Somers town, Stafford town, Tolland town, Vernon town, Willington town
Windham County part: Ashford town, Chaplin town, Windham town, Canterbury town, Plainfield town

NONMETROPOLITAN COUNTIES
Hartford County part: Hartland town
Litchfield County part: Canaan town, Colebrook town, Cornwall town, Goshen town, Kent town, Litchfield town, Morris town, Norfolk town, North Canaan town, Salisbury town, Sharon town, Torrington town, Warren town
Middlesex County part: Chester town, Deep River town, Essex town, Westbrook town
New London County part: Lyme town, Voluntown town
Tolland County part: Union town
Windham County part: Brooklyn town, Eastford town, Hampton town, Killingly town, Pomfret town, Putnam town, Scotland town, Sterling town, Woodstock town

DELAWARE (MID-ATLANTIC)

CPI AREAS: COUNTIES
PMSA Wilmington-Newark, DE-MD: New Castle

METROPOLITAN COUNTIES
Kent

NONMETROPOLITAN COUNTIES
Sussex

DIST. OF COLUMBIA (MID-ATLANTIC)

CPI AREAS: COUNTIES
District of Columbia

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

FLORIDA (SOUTHEAST)

CPI AREAS: COUNTIES
PMSA Fort Lauderdale, FL: Broward
PMSA Miami, FL: Dade
MSA Tampa-St. Petersburg-Clearwater, FL: Hernando, Hillsborough, Pasco, Pinellas

METROPOLITAN COUNTIES
Alachua, Bay, Brevard, Charlotte, Clay, Collier, Duval, Escambia, Flagler, Gadsden, Lake, Lee, Leon, Manatee, Marion, Martin, Nassau, Okaloosa, Orange, Osceola, Palm Beach, Polk, Santa Rosa, Sarasota, Seminole, St. Johns, St. Lucie, Volusia

NONMETROPOLITAN COUNTIES
Baker, Bradford, Calhoun, Citrus, Columbia, Desoto, Dixie, Franklin, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Indian River, Jackson, Jefferson, Lafayette, Levy, Liberty, Madison, Monroe, Okeechobee, Putnam, Sumter, Suwannee, Taylor
Union, Wakulla, Walton, Washington

GEORGIA (SOUTHEAST)

CPI AREAS: COUNTIES
*Atlanta, GA: Barrow, Bartow, Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, Spalding

*COUNTY Carroll County, GA
*COUNTY Pickens County, GA
*COUNTY Walton County, GA

METROPOLITAN COUNTIES
Bibb, Bryan, Catoosa, Chatham, Chattahoochee, Clarke, Columbia, Dade, Dougherty, Effingham, Harris, Houston, Jones, Lee, Madison, Mcduffie, Muscogee, Oconee, Peach, Richmond, Twiggs, Walker

NONMETROPOLITAN COUNTIES
Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Ben Hill, Berrien, Bleckley, Brantley, Brooks, Bulloch, Burke, Butts, Calhoun, Camden, Candler, Charlton, Chattooga, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Dawson, Decatur, Dodge, Dooly, Early
Echols, Elbert, Emanuel, Evans, Fannin, Floyd, Franklin, Gilmer, Glascock, Glynn, Gordon, Grady, Greene, Habersham, Hall, Hancock

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

GEORGIA (SOUTHEAST) cont.

Haralson, Hart, Heard, Irwin, Jackson, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Lamar, Lanier, Laurens, Liberty, Lincoln, Long, Lowndes, Lumpkin, Macon, Marion, Mcintosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Oglethorpe, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Schley, Screven, Seminole, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Towns, Treutlen, Troup, Turner, Union, Upson, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, Worth

HAWAII (PACIFIC/HAWAII)

CPI AREAS: COUNTIES
STATE Hawaii: Hawaii, Honolulu, Kauai, Maui

IDAHO (NORTHWEST/ALASKA)

METROPOLITAN COUNTIES
Ada, Canyon

NONMETROPOLITAN COUNTIES
Adams, Bannock, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Caribou, Cassia, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Idaho, Jefferson, Jerome, Kootenai, Latah, Lemhi, Lewis, Lincoln, Madison, Minidoka, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Teton, Twin Falls, Valley, Washington

ILLINOIS (MIDWEST)

CPI AREAS: COUNTIES
*Chicago, IL: Cook, Dupage, Kane, Lake, Mchenry, Will
*COUNTY De Kalb, IL: Dekalb
*COUNTY Grundy, IL: Grundy
PMSA Kankakee, IL: Kankakee
*COUNTY Kendall, Il: Kendall
MSA St. Louis, MO-IL: Clinton, Jersey, Madison, Monroe, St. Clair

METROPOLITAN COUNTIES
Boone, Champaign, Henry, Macon, Mclean, Menard, Ogle, Peoria, Rock Island, Sangamon, Tazewell, Winnebago, Woodford

NONMETROPOLITAN COUNTIES
Adams, Alexander, Bond, Brown, Bureau, Calhoun, Carroll, Cass, Christian, Clark, Clay, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Hamilton, Hancock, Hardin, Henderson

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

ILLINOIS (MIDWEST) cont.

Iroquois, Jackson, Jasper, Jefferson, Jo Daviess, Johnson, Knox, La Salle, Lawrence, Lee, Livingston, Logan, Macoupin, Marion, Marshall, Mason, Massac, Mcdonough, Mercer, Montgomery, Morgan, Moultrie, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Saline, Schuyler, Scott, Shelby, Stark, Stephenson, Union, Vermilion, Wabash, Warren, Washington, Wayne, White
Whiteside, Williamson

INDIANA (MIDWEST)

CPI AREAS: COUNTIES
*Cincinnati, OH-KY-IN: Dearborn
PMSA Gary, IN: Lake, Porter
*COUNTY Ohio, IN: Ohio

METROPOLITAN COUNTIES
Adams, Allen, Boone, Clark, Clay, Clinton, De Kalb, Delaware, Elkhart, Floyd, Hamilton, Hancock, Harrison, Hendricks, Howard, Huntington, Johnson, Madison, Marion, Monroe, Morgan, Posey, Scott, Shelby, St. Joseph, Tippecanoe, Tipton, Vanderburgh, Vermillion, Vigo, Warrick, Wells, Whitley

NONMETROPOLITAN COUNTIES
Bartholomew, Benton, Blackford, Brown, Carroll, Cass, Crawford, Daviess, Decatur, Dubois, Fayette, Fountain, Franklin, Fulton, Gibson, Grant, Greene, Henry, Jackson, Jasper, Jay, Jefferson, Jennings, Knox, Kosciusko, La Porte, Lagrange, Lawrence, Marshall, Martin, Miami, Montgomery, Newton, Noble, Orange, Owen, Parke, Perry, Pike, Pulaski, Putnam, Randolph, Ripley, Rush, Spencer, Starke, Steuben, Sullivan, Switzerland, Union, Wabash, Warren, Washington, Wayne, White

IOWA (GREAT PLAINS)

METROPOLITAN COUNTIES
Black Hawk, Dallas, Dubuque, Johnson, Linn, Polk, Pottawattamie, Scott, Warren, Woodbury

NONMETROPOLITAN COUNTIES
Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Clinton, Crawford, Davis, Decatur, Delaware, Des Moines, Dickinson, Emmet, Fayette, Floyd, Franklin, Fremont, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida
Iowa, Jackson, Jasper, Jefferson, Jones, Keokuk, Kossuth, Lee, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, O'Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Washington, Wayne, Webster, Winnebago, Winneshiek, Worth, Wright

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

KANSAS (GREAT PLAINS)

CPI AREAS: COUNTIES
MSA Kansas City, MO-KS: Johnson, Leavenworth, Miami, Wyandotte

METROPOLITAN COUNTIES
Butler, Douglas, Harvey, Sedgwick, Shawnee

NONMETROPOLITAN COUNTIES
Allen, Anderson, Atchison, Barber, Barton, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche, Cowley, Crawford, Decatur, Dickinson, Doniphan, Edwards, Elk, Ellis, Ellsworth, Finney, Ford, Franklin, Geary, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Haskell, Hodgeman, Jackson, Jefferson, Jewell, Kearny, Kingman, Kiowa Labette, Lane, Lincoln, Linn, Logan, Lyon, Marion, Marshall, Mcpherson, Meade, Mitchell, Montgomery, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osage, Osborne, Ottawa, Pawnee, Phillips, Pottawatomie, Pratt, Rawlins, Reno, Republic, Rice, Riley, Rooks, Rush, Russell, Saline, Scott, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wabaunsee Wallace, Washington, Wichita, Wilson, Woodson

KENTUCKY (SOUTHEAST)

CPI AREAS: COUNTIES
*Cincinnati, OH-KY-IN: Boone, Campbell, Kenton
*COUNTY Gallatin, KY: Gallatin
*COUNTY Grant, KY: Grant
*COUNTY Pendleton, KY: Pendleton

METROPOLITAN COUNTIES
Bourbon, Boyd, Bullitt, Carter, Christian, Clark, Daviess, Fayette, Greenup, Henderson, Jefferson, Jessamine, Madison, Oldham, Scott, Woodford

NONMETROPOLITAN COUNTIES
Adair, Allen, Anderson, Ballard, Barren, Bath, Bell, Boyle, Bracken, Breathitt, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Carroll, Casey, Clay, Clinton, Crittenden, Cumberland, Edmonson, Elliott, Estill, Fleming, Floyd, Franklin, Fulton, Garrard, Graves, Grayson, Green, Hancock, Hardin, Harlan, Harrison, Hart, Henry, Hickman, Hopkins, Jackson, Johnson, Knott, Knox, Larue Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Livingston, Logan, Lyon, Magoffin, Marion, Marshall, Martin, Mason, Mccracken, Mccreary, Mclean, Meade, Menifee, Mercer, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Owen, Owsley, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Shelby, Simpson, Spencer, Taylor, Todd, Trigg Trimble, Union, Warren, Washington, Wayne, Webster, Whitley, Wolfe

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

LOUISIANA (SOUTHWEST)

CPI AREAS: COUNTIES

*New Orleans, LA: Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany

*COUNTY St. James Parish, LA: St. James

METROPOLITAN COUNTIES

Acadia, Ascension, Bossier, Caddo, Calcasieu, East Baton Rouge, Lafayette, Lafourche, Livingston, Ouachita, Rapides, St. Landry, St. Martin, Terrebonne, Webster, West Baton Rouge

NONMETROPOLITAN COUNTIES

Allen, Assumption, Avoyelles, Beauregard, Bienville, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson Davis, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Pointe Coupee, Red River, Richland, Sabine, St. Helena, St. Mary, Tangipahoa, Tensas, Union, Vermilion, Vernon Washington, West Carroll, West Feliciana, Winn

MAINE (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Portsmouth-Rochester, NH-ME

York County part: Berwick town, Eliot town, Kittery town, South Berwick town, York town

METROPOLITAN COUNTIES

Androscoggin County part: Auburn city, Greene town, Lewiston city, Lisbon town, Mechanic Falls town, Poland town, Sabattus town, Turner town, Wales town

Cumberland County part: Cape Elizabeth town, Casco town, Cumberland town, Falmouth town, Freeport town, Gorham town, Gray town, North Yarmouth town, Portland city, Raymond town, Scarborough town, South Portland city, Standish town, Westbrook city, Windham town, Yarmouth town

Penobscot County part: Bangor city, Brewer city, Eddington town, Glenburn town, Hampden town, Hermon town, Holden town, Kenduskeag town, Milford town, Old Town city, Orono town, Orrington town, Penobscot Indian Island, Veazie town

Waldo County part: Winterport town

York County part: Buxton town, Hollis town, Limington town, Old Orchard Beach

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

MAINE (NEW ENGLAND) cont.

NONMETROPOLITAN COUNTIES

Aroostook
Franklin
Hancock
Kennebec
Knox
Lincoln
Oxford
Piscataquis
Sagadahoc
Somerset
Washington
Androscoggin County part: Durham town, Leeds town, Livermore town, Livermore Falls town, Minot town
Cumberland County part: Harpswell town, Harrison town, Naples town, New Gloucester town, Pownal town, Sebago town
Penobscot County part: Alton town, Argyle unorg., Bradford town, Bradley town, Burlington town, Carmel town, Carroll plantation, Charleston town, Chester town, Clifton town, Corinna town, Corinth town, Dexter town, Dixmont town, Drew plantation, East Central Penob, East Millinocket town, Edinburg town, Enfield town Etna town, Exeter town, Garland town, Greenbush town, Greenfield town, Howland town, Hudson town, Kingman unorg., Lagrange town, Lakeville town, Lee town, Levant town, Lincoln town, Lowell town, Mattawamkeag town, Maxfield town, Medway town, Millinocket town, Mount Chase town, Newburgh town Newport town, North Penobscot unorg., Passadumkeag town, Patten town, Plymouth town, Prentiss plantation, Seboeis plantation, Springfield town, Stacyville town, Stetson town, Twombly unorg., Webster plantation Whitney unorg., Winn town, Woodville town
Waldo County part: Belfast city, Belmont town, Brooks town, Burnham town, Frankfort town, Freedom town, Islesboro town, Jackson town, Knox town, Liberty town, Lincolnville town, Monroe town, Montville town, Morrill town Northport town, Palermo town, Prospect town, Searsmont town, Searsport town, Stockton Springs, Swanville town, Thorndike town, Troy town, Unity town, Waldo town
York County part: Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town, Lebanon town, Limerick town, Lyman town, Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Sanford town, Shapleigh town, Waterboro town, Wells town

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

MARYLAND (MID-ATLANTIC)

CPI AREAS: COUNTIES
PMSA Baltimore, MD: Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city, Columbia city
PMSA Hagerstown, MD: Washington
*Washington, DC-MD-VA: Calvert, Charles, Frederick, Montgomery, Prince George's
PMSA Wilmington-Newark, DE-MD: Cecil

METROPOLITAN COUNTIES
Allegany

NONMETROPOLITAN COUNTIES
Caroline, Dorchester, Garrett, Kent, Somerset, St. Mary's, Talbot, Wicomico, Worcester

MASSACHUSETTS (NEW ENGLAND)

CPI AREAS: COUNTIES
PMSA Boston, MA-NH
Bristol County part: Berkley town, Dighton town, Mansfield town, Norton town, Taunton city
Essex County part: Amesbury town, Beverly city, Danvers town, Essex town, Gloucester city, Hamilton town, Ipswich town, Lynn city, Lynnfield town, Manchester town, Marblehead town, Middleton town, Nahant town, Newbury town, Newburyport city, Peabody city, Rockport town, Rowley town, Salem city, Salisbury town, Saugus town, Swampscott town, Topsfield town, Wenham town
Middlesex County part: Acton town, Arlington town, Ashland town, Ayer town, Bedford town, Belmont town, Boxborough town, Burlington town, Cambridge city, Carlisle town, Concord town, Everett city, Framingham town, Holliston town, Hopkinton town, Hudson town, Lexington town, Lincoln town, Littleton town, Malden city, Marlborough city, Maynard town, Medford city, Melrose city, Natick town, Newton city, North Reading town, Reading town, Sherborn town, Shirley town, Somerville city, Stoneham town, Stow town, Sudbury town, Townsend town, Wakefield town, Waltham city, Watertown town, Wayland town, Weston town, Wilmington town, Winchester town, Woburn city
Norfolk County part: Bellingham town, Braintree town, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin town, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth town, Wrentham town

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

MASSACHUSETTS (NEW ENGLAND) cont.

Plymouth County part: Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland town, Scituate town, Wareham town
Suffolk county part: Boston city, Chelsea city, Revere city, Winthrop town
Worcester County part: Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town, Lancaster town, Mendon town, Milford town, Millville town, Southborough town, Upton town

PMSA Brockton, MA
Bristol County part: Easton town, Raynham town
Norfolk County part: Avon town
Plymouth County part: Abington town, Bridgewater town, Brockton city, East Bridgewater town, Halifax town, Hanson town, Lakeville town, Middleborough town, Plympton town, West Bridgewater town, Whitman town

PMSA Fitchburg-Leominster, MA

Middlesex County part: Ashby town
Worcester County part: Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg town, Templeton town, Westminster town, Winchendon town

PMSA Lawrence, MA-NH
Essex County part: Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city, Lawrence city, Merrimac town, Methuen town, North Andover town, West Newbury town

PMSA Lowell, MA-NH
Middlesex County part: Billerica town, Chelmsford town, Dracut town, Dunstable town, Groton town, Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town

PMSA New Bedford, MA
Bristol County part: Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city
Plymouth County part: Marion town, Mattapoisett town, Rochester town

PMSA Worcester, MA-CT
Hampden County part: Holland town
Worcester County part: Auburn town, Barre town, Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town, East Brookfield town, Grafton town, Holden town, Leicester town, Millbury town Northborough town, Northbridge town, North Brookfield town, Oakham town, Oxford town, Paxton town, Princeton town, Rutland town, Shrewsbury town, Southbridge town, Spencer town, Sterling town, Sturbridge town, Sutton town, Uxbridge town, Webster town, Westboroughtown, West Boylston town, West Brookfield town, Worcester city

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

MASSACHUSETTS (NEW ENGLAND) cont.

METROPOLITAN COUNTIES

Barnstable County part: Barnstable town, Brewster town, Chatham town, Dennis town, Eastham town, Harwich town, Mashpee town, Orleans town, Sandwich town, Yarmouth town

Berkshire County part: Adams town, Cheshire town, Dalton town, Hinsdale town, Lanesborough town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town

Bristol County part: Attleboro city, Fall River city, North Attleborough, Rehoboth town, Seekonk town, Somerset town, Swansea town, Westport town

Franklin County part: Sunderland town

Hampden County part: Agawam town, Chicopee city, East Longmeadow to, Hampden town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer town, Russell town, Southwick town, Springfield city, Westfield city, West Springfield town, Wilbraham town

Hampshire County part: Amherst town, Belchertown town, Easthampton town, Granby town, Hadley town, Hatfield town, Huntington town, Northampton city, Southampton town, South Hadley town, Ware town, Williamsburg town

NONMETROPOLITAN COUNTIES

Dukes

Nantucket

Barnstable County part: Bourne town, Falmouth town, Provincetown town, Truro town, Wellfleet town

Berkshire County part: Alford town, Becket town, Clarksburg town, Egremont town, Florida town, Great Barrington town, Hancock town, Monterey town, Mount Washington town, New Ashford town, New Marlborough town, North Adams city, Otis town, Peru town, Sandisfield town, Savoy town, Sheffield town, Tyringham town, Washington town, West Stockbridge town, Williamstown town, Windsor town

Franklin County part: Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield town, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague town, New Salem town, Northfield town, Orange town, Rowe town Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town

Hampden County part: Blandford town, Brimfield town, Chester town, Granville town, Tolland town, Wales town

Hampshire County part: Chesterfield town, Cummington town, Goshen town, Middlefield town, Pelham town, Plainfield town, Westhampton town, Worthington town

Worcester County part: Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town, Phillipston town, Royalston town, Warren town

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

MICHIGAN (MIDWEST)

CPI AREAS: COUNTIES
PMSA Ann Arbor, MI: Lenawee, Livingston, Washtenaw
PMSA Detroit, MI: Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
PMSA Flint, MI: Genesee

METROPOLITAN COUNTIES
Allegan, Bay, Berrien, Calhoun, Clinton, Eaton, Ingham, Jackson, Kalamazoo, Kent, Midland, Muskegon, Ottawa, Saginaw, Van Buren

NONMETROPOLITAN COUNTIES
Alcona, Alger, Alpena, Antrim, Arenac, Baraga, Barry, Benzie, Branch, Cass, Charlevoix, Cheboygan, Chippewa, Clare, Crawford, Delta, Dickinson, Emmet, Gladwin, Gogebic, Grand Traverse, Gratiot, Hillsdale, Houghton, Huron, Ionia, Iosco, Iron, Isabella
Kalkaska, Keweenaw, Lake, Leelanau, Luce, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Missaukee, Montcalm, Montmorency, Newaygo, Oceana, Ogemaw, Ontonagon, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, Sanilac, Schoolcraft, Shiawassee, St. Joseph, Tuscola, Wexford

MINNESOTA (MIDWEST)

CPI AREAS: COUNTIES
MSA Minneapolis-St. Paul, MN-WI: Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright

METROPOLITAN COUNTIES
Benton, Clay, Houston, Olmsted, Polk, St. Louis, Stearns

NONMETROPOLITAN COUNTIES
Aitkin, Becker, Beltrami, Big Stone, Blue Earth, Brown, Carlton, Cass, Chippewa, Clearwater, Cook, Cottonwood, Crow Wing, Dodge, Douglas, Faribault, Fillmore, Freeborn, Goodhue, Grant, Hubbard, Itasca, Jackson, Kanabec, Kandiyohi, Kittson, Koochiching, Lac qui Parle, Lake, Lake of the Woods, Le Sueur, Lincoln, Lyon, Mahnomen, Marshall, Martin, Mcleod, Meeker, Mille Lacs, Morrison
Mower, Murray, Nicollet, Nobles, Norman, Otter Tail, Pennington, Pine, Pipestone, Pope, Red Lake, Redwood, Renville, Rice, Rock, Roseau, Sibley, Steele, Stevens, Swift, Todd, Traverse, Wabasha, Wadena, Waseca, Watonwan, Wilkin, Winona, Yellow Medicine

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

MISSISSIPPI (SOUTHEAST)

METROPOLITAN COUNTIES
Desoto, Hancock, Harrison, Hinds, Jackson, Madison, Rankin

NONMETROPOLITAN COUNTIES
Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, Forrest, Franklin, George, Greene, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Marion, Marshall, Monroe, Montgomery Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo

MISSOURI (GREAT PLAINS)

CPI AREAS: COUNTIES
MSA Kansas City, MO-KS: Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
MSA St. Louis, MO-IL: Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city, Crawford-Sullivan (part)

METROPOLITAN COUNTIES
Andrew, Boone, Buchanan, Christian, Greene, Jasper, Newton, Webster

NONMETROPOLITAN COUNTIES
Adair, Atchison, Audrain, Barry, Barton, Bates, Benton, Bollinger, Butler, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cedar, Chariton, Clark, Cole, Cooper, Crawford, Dade, Dallas, Daviess, Dekalb, Dent, Douglas, Dunklin, Gasconade, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howard, Howell, Iron, Johnson, Knox, Laclede, Lawrence, Lewis, Linn, Livingston, Macon, Madison, Maries, Marion, Mcdonald, Mercer, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgan, New Madrid, Nodaway, Oregon, Osage, Ozark, Pemiscot, Perry, Pettis, Phelps, Pike, Polk, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, Saline, Schuyler, Scotland, Scott, Shannon, Shelby, St. Clair, St. Francois, Ste. Genevieve, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Washington, Wayne, Worth, Wright

MONTANA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Cascade, Yellowstone

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

NONMETROPOLITAN COUNTIES
Beaverhead, Big Horn, Blaine, Broadwater, Carbon, Carter, Chouteau, Custer, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Garfield, Glacier, Golden Valley, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, Madison, Mccone, Meagher, Mineral, Missoula, Musselshell, Park, Petroleum, Phillips, Pondera, Powder River, Powell, Prairie
Ravalli, Richland, Roosevelt, Rosebud, Sanders, Sheridan, Silver Bow, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux

NEBRASKA (GREAT PLAINS)

METROPOLITAN COUNTIES
Cass, Dakota, Douglas, Lancaster, Sarpy, Washington

NONMETROPOLITAN COUNTIES
Adams, Antelope, Arthur, Banner, Blaine, Boone, Box Butte, Boyd, Brown, Buffalo, Burt, Butler, Cedar, Chase, Cherry, Cheyenne, Clay, Colfax, Cuming, Custer, Dawes, Dawson, Deuel, Dixon, Dodge, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Kimball, Knox, Lincoln, Logan, Loup, Madison, Mcpherson, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Rock, Saline, Saunders, Scotts Bluff, Seward, Sheridan, Sherman, Sioux, Stanton, Thayer, Thomas, Thurston, Valley, Wayne, Webster, Wheeler, York

NEVADA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES
Clark, Nye, Washoe

NONMETROPOLITAN COUNTIES
Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Pershing, Storey, White Pine, Carson City

NEW HAMPSHIRE (NEW ENGLAND)

CPI AREAS: COUNTIES
PMSA Lawrence, MA-NH
Rockingham County part: Atkinson town, Chester town, Danville town, Derry town, Fremont town, Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

NEW HAMPSHIRE (NEW ENGLAND) cont.

PMSA Lowell, MA-NH
Hillsborough county part: Pelham town
PMSA Manchester, NH
Hillsborough county part: Bedford town, Goffstown town, Manchester city, Weare town
Merrimack county part: Allenstown town, Hooksett town
Rockingham county part: Auburn town, Candia town, Londonderry town
PMSA Nashua, NH
Hillsborough county part: Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Wilton town
PMSA Portsmouth-Rochester, NH-ME
Rockingham County part: Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton town, Hampton Falls town, Kensington town, New Castle town, Newfields town, Newington town, Newmarket town North Hampton town, Portsmouth city, Rye town, Stratham town
Strafford County part: Barrington town, Dover city, Durham town, Farmington town, Lee town, Madbury town, Milton town, Rochester city, Rollinsford town, Somersworth city

NONMETROPOLITAN COUNTIES
Belknap
Carroll
Cheshire
Coos
Grafton
Sullivan
Hillsborough County part: Antrim town, Bennington town, Deering town, Francestown town, Greenfield town, Hancock town, Hillsborough town, Lyndeborough town, New Boston town, Peterborough town, Sharon town, Temple town Windsor town
Merrimack County part: Andover town, Boscawen town, Bow town, Bradford town, Canterbury town, Chichester town, Concord city, Danbury town, Dunbarton town, Epsom town, Franklin city, Henniker town, Hill town, Hopkinton town Loudon town, Newbury town, New London town, Northfield town, Pembroke town, Pittsfield town, Salisbury town, Sutton town, Warner town, Webster town, Wilmot town
Rockingham County part: Deerfield town, Northwood town, Nottingham town,
Strafford County part: Middleton town, New Durham town, Strafford town

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

NEW JERSEY (NEW YORK/NEW JERSEY)

CPI AREAS: COUNTIES

PMSA Atlantic-Cape May, NJ: Atlantic, Cape May
PMSA Bergen-Passaic, NJ: Bergen, Passaic
PMSA Jersey City, NJ: Hudson
PMSA Middlesex-Somerset-Hunterdon, NJ: Hunterdon, Middlesex, Somerset
PMSA Monmouth-Ocean, NJ: Monmouth, Ocean
PMSA Newark, NJ: Essex, Morris, Sussex, Union, Warren
PMSA Philadelphia, PA-NJ: Burlington, Camden, Gloucester, Salem
PMSA Trenton, NJ: Mercer
PMSA Vineland-Millville-Bridgeton, NJ: Cumberland

NEW MEXICO (SOUTHWEST)

METROPOLITAN COUNTIES
Bernalillo, Dona Ana, Los Alamos, Sandoval, Santa Fe, Valencia

NONMETROPOLITAN COUNTIES
Catron, Chaves, Cibola, Colfax, Curry, Debaca, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Lincoln, Luna, Mckinley, Mora, Otero
Quay, Rio Arriba, Roosevelt, San Juan, San Miguel, Sierra, Socorro, Taos, Torrance, Union

NEW YORK (NEW YORK/NEW JERSEY)

CPI AREAS: COUNTIES
PMSA Buffalo-Niagara Falls, NY: Erie, Niagara
PMSA Dutchess County, NY : Dutchess
PMSA Nassau-Suffolk, NY: Nassau, Suffolk
PMSA New York, NY: Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland
*COUNTY Westchester, NY: Westchester
PMSA Newburgh, NY-PA: Orange

METROPOLITAN COUNTIES
Albany, Broome, Cayuga, Chautauqua, Chemung, Genesee, Herkimer, Livingston, Madison, Monroe, Montgomery, Oneida, Onondaga, Ontario
Orleans, Oswego, Rensselaer, Saratoga, Schenectady, Schoharie, Tioga, Warren, Washington, Wayne

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

NEW YORK (NEW YORK/NEW JERSEY)

NONMETROPOLITAN COUNTIES
Allegany, Cattaraugus, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Jefferson, Lewis, Otsego, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tompkins, Ulster, Wyoming, Yates

NORTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES
Alamance, Alexander, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Chatham, Cumberland, Currituck, Davidson, Davie, Durham, Edgecombe, Forsyth, Franklin, Gaston, Guilford, Johnston, Lincoln, Madison, Mecklenburg, Nash, New Hanover, Onslow, Orange, Pitt, Randolph, Rowan, Stokes, Union, Wake, Wayne, Yadkin

NONMETROPOLITAN COUNTIES
Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Camden, Carteret, Caswell, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Dare, Duplin, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Jones, Lee, Lenoir, Macon, Martin, Mcdowell, Mitchell, Montgomery, Moore, Northampton, Pamlico, Pasquotank, Pender
Perquimans, Person, Polk, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Watauga, Wilkes, Wilson, Yancey

NORTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Burleigh, Cass, Grand Forks, Morton

NONMETROPOLITAN COUNTIES
Adams, Barnes, Benson, Billings, Bottineau, Bowman, Burke, Cavalier, Dickey, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grant, Griggs, Hettinger, Kidder, Lamoure, Logan, Mchenry, Mcintosh, Mckenzie, Mclean, Mercer, Mountrail, Nelson, Oliver, Pembina, Pierce, Ramsey, Ransom, Renville, Richland, Rolette, Sargent, Sheridan, Sioux, Slope, Stark, Steele, Stutsman, Towner, Traill
Walsh, Ward, Wells, Williams

OHIO (MIDWEST)

CPI AREAS: COUNTIES
PMSA Akron, OH: Portage, Summit
*COUNTY Brown, OH: Brown
*Cincinnati, OH-KY-IN: Clermont, Hamilton, Warren
PMSA Cleveland-Lorain-Elyria, OH: Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
PMSA Hamilton-Middletown, OH: Butler

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

OHIO (MIDWEST) cont.

METROPOLITAN COUNTIES
Allen, Auglaize, Belmont, Carroll, Clark, Columbiana, Crawford, Delaware, Fairfield, Franklin, Fulton, Greene, Jefferson, Lawrence, Licking, Lucas, Madison, Mahoning, Miami, Montgomery, Pickaway, Richland, Stark, Trumbull, Washington, Wood

NONMETROPOLITAN COUNTIES
Adams, Ashland, Athens, Champaign, Clinton, Coshocton, Darke, Defiance, Erie, Fayette, Gallia, Guernsey, Hancock, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Huron, Jackson, Knox, Logan, Marion, Meigs, Mercer, Monroe, Morgan, Morrow, Muskingum, Noble, Ottawa, Paulding, Perry, Pike, Preble, Putnam, Ross, Sandusky, Scioto, Seneca, Shelby, Tuscarawas, Union, Van Wert, Vinton, Wayne Williams, Wyandot

OKLAHOMA (SOUTHWEST)

METROPOLITAN COUNTIES
Canadian, Cleveland, Comanche, Creek, Garfield, Logan, Mcclain, Oklahoma, Osage, Pottawatomie, Rogers, Sequoyah, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES
Adair, Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Carter, Cherokee, Choctaw, Cimarron, Coal, Cotton, Craig, Custer, Delaware, Dewey, Ellis, Garvin, Grady, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Love, Major, Marshall, Mayes, Mccurtain, Mcintosh, Murray, Muskogee, Noble, Nowata
Okfuskee, Okmulgee, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pushmataha, Roger Mills, Seminole, Stephens, Texas, Tillman, Washington, Washita, Woods, Woodward

OREGON (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES
PMSA Portland-Vancouver, OR-WA: Clackamas, Columbia, Multnomah, Washington, Yamhill
PMSA Salem, OR: Marion, Polk

METROPOLITAN COUNTIES
Jackson, Lane

NONMETROPOLITAN COUNTIES
Baker, Benton, Clatsop, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Grant, Harney, Hood River, Jefferson, Josephine, Klamath, Lake, Lincoln, Linn, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Wheeler

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

PENNSYLVANIA (MID-ATLANTIC)

CPI AREAS: COUNTIES
PMSA Newburgh, NY-PA: Pike
PMSA Philadelphia, PA-NJ: Bucks, Chester, Delaware, Montgomery, Philadelphia
PMSA Pittsburgh, PA: Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland

METROPOLITAN COUNTIES
Berks, Blair, Cambria, Carbon, Centre, Columbia, Cumberland, Dauphin, Erie, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mercer, Northampton, Perry, Somerset, Wyoming, York

NONMETROPOLITAN COUNTIES
Adams, Armstrong, Bedford, Bradford, Cameron, Clarion, Clearfield, Clinton, Crawford, Elk, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, Mc Kean, Mifflin, Monroe, Montour, Northumberland, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Wayne

RHODE ISLAND (NEW ENGLAND)

METROPOLITAN COUNTIES
Bristol County part: Barrington town, Bristol town, Warren town
Kent County part: Coventry town, East Greenwich town, Warwick city, West Greenwich town, West Warwick town
Providence County part: Burrillville town, Central Falls city, Cranston city, Cumberland town, East Providence city, Foster town, Glocester town, Johnston town, Lincoln town, North Providence town, North Smithfield town, Pawtucket city, Providence city, Scituate town, Smithfield town, Woonsocket city
Newport County part: Jamestown town, Little Compton town, Tiverton town
Washington County part: Charlestown town, Exeter town, Narragansett town, North Kingstown to, Richmond town, South Kingstown town
Washington County part: Hopkinton town, Westerly town

NONMETROPOLITAN COUNTIES
Newport County part: Middletown town, Newport city, Portsmouth town
Washington County part: New Shoreham town

SOUTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES
Aiken, Anderson, Berkeley, Charleston, Cherokee, Dorchester, Edgefield, Florence, Greenville, Horry, Lexington, Pickens, Richland, Spartanburg, Sumter, York

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

SOUTH CAROLINA (SOUTHEAST) cont.

NONMETROPOLITAN COUNTIES
Abbeville, Allendale, Bamberg, Barnwell, Beaufort, Calhoun, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Fairfield, Georgetown, Greenwood, Hampton, Jasper, Kershaw, Lancaster, Laurens, Lee, Marion, Marlboro, Mccormick, Newberry, Oconee, Orangeburg, Saluda, Union, Williamsburg

SOUTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Lincoln, Minnehaha, Pennington

NONMETROPOLITAN COUNTIES
Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hughes, Hutchinson, Hyde, Jackson, Jerauld, Jones, Kingsbury, Lake, Lawrence, Lyman, Marshall, Mccook, Mcpherson, Meade, Mellette Miner, Moody, Perkins, Potter, Roberts, Sanborn, Shannon, Spink, Stanley, Sully, Todd, Tripp, Turner, Union, Walworth, Yankton, Ziebach

TENNESSEE (SOUTHEAST)

METROPOLITAN COUNTIES
Anderson, Blount, Carter, Cheatham, Davidson, Dickson, Fayette, Hamilton, Hawkins, Knox, Loudon, Madison, Marion, Montgomery, Robertson, Rutherford, Sevier, Shelby, Sullivan, Sumner, Tipton, Unicoi, Union, Washington, Williamson, Wilson

NONMETROPOLITAN COUNTIES
Bedford, Benton, Bledsoe, Bradley, Campbell, Cannon, Carroll, Chester, Claiborne, Clay, Cocke, Coffee, Crockett, Cumberland, Dekalb, Decatur, Dyer, Fentress, Franklin, Gibson, Giles, Grainger, Greene, Grundy, Hamblen, Hancock, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Lake, Lauderdale, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Mcminn, Mcnairy, Meigs, Monroe, Moore, Morgan, Obion, Overton, Perry, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Smith, Stewart, Trousdale, Van Buren, Warren, Wayne, Weakley, White

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

TEXAS (SOUTHWEST)

CPI AREAS: COUNTIES
PMSA Brazoria, TX: Brazoria
*Dallas, TX: Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
PMSA Fort Worth-Arlington, TX: Hood, Johnson, Parker, Tarrant
PMSA Galveston-Texas City, TX: Galveston
*COUNTY Henderson, TX: Henderson
PMSA Houston, TX: Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller

METROPOLITAN COUNTIES
Archer, Bastrop, Bell, Bexar, Bowie, Brazos, Caldwell, Cameron, Comal, Coryell, Ector, El Paso, Grayson, Gregg, Guadalupe, Hardin, Harrison, Hays, Hidalgo, Jefferson, Lubbock, Mclennan, Midland, Nueces, Orange, Potter, Randall, San Patricio, Smith, Taylor, Tom Green, Travis, Upshur, Victoria, Webb, Wichita, Williamson, Wilson

NONMETROPOLITAN COUNTIES
Anderson, Andrews, Angelina, Aransas, Armstrong, Atascosa, Austin, Bailey, Bandera, Baylor, Bee, Blanco, Borden, Bosque, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Calhoun, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Colorado, Comanche, Concho, Cooke, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Dewitt Deaf Smith, Delta, Dickens, Dimmit, Donley, Duval, Eastland, Edwards, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Franklin, Freestone, Frio, Gaines, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grimes, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hill, Hockley, Hopkins, Houston, Howard, Hudspeth, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jim Hogg, Jim Wells, Jones, Karnes, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, La Salle, Lamar, Lamb, Lampasas, Lavaca, Lee, Leon, Limestone, Lipscomb, Live Oak, Llano, Loving, Lynn, Madison, Marion, Martin, Mason, Matagorda, Maverick, Mcculloch, Mcmullen, Medina, Menard, Milam, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parmer, Pecos, Polk, Presidio, Rains, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Terrell, Terry, Throckmorton, Titus, Trinity, Tyler, Upton, Uvalde, Val Verde, Van Zandt, Walker, Ward, Washington, Wharton, Wheeler, Wilbarger, Willacy, Winkler, Wise, Wood, Yoakum, Young, Zapata, Zavala

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

UTAH (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Davis, Salt Lake, Utah, Weber

NONMETROPOLITAN COUNTIES
Beaver, Box Elder, Cache, Carbon, Daggett, Duchesne, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, Morgan, Piute, Rich, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Wasatch, Washington, Wayne

VERMONT (NEW ENGLAND)

METROPOLITAN COUNTIES
Chittenden County part: Burlington city, Charlotte town, Colchester town, Essex town, Hinesburg town, Jericho town, Milton town, Richmond town, St. George town, Shelburne town, South Burlington city, Williston town, Winooski city
Franklin County part: Fairfax town, Georgia town, St. Albans city, St. Albans town, Swanton town
Grand Isle County part: Grand Isle town, South Hero town

NONMETROPOLITAN COUNTIES
Addison
Bennington
Caledonia
Essex
Lamoille
Orange
Orleans
Rutland
Washington
Windham
Windsor
Chittenden County part: Bolton town, Buels gore, Huntington town, Underhill town, Westford town
Franklin County part: Bakersfield town, Berkshire town, Enosburg town, Fairfield town, Fletcher town, Franklin, Highgate town, Montgomery town, Richford town, Sheldon town
Grand Isle County part: Alburg town, Isle La Motte town, North Hero town

VIRGINIA (MID-ATLANTIC)

CPI AREAS: COUNTIES
*COUNTY Clarke, VA: Clarke
*COUNTY Culpeper, VA: Culpeper
*COUNTY King George, VA: King George
*COUNTY Warren, VA: Warren

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

VIRGINIA (MID-ATLANTIC) cont.

CPI AREAS: COUNTIES
*Washington, DC-MD-VA: Arlington, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas Park city, Manassas city

METROPOLITAN COUNTIES
Albemarle, Amherst, Bedford, Botetourt, Campbell, Charles City, Chesterfield, Dinwiddie, Fluvanna, Gloucester, Goochland, Greene, Hanover, Henrico, Isle of Wight, James City, Mathews, New Kent, Pittsylvania, Powhatan, Prince George, Roanoke, Scott, Washington, York, Bedford city, Bristol city, Charlottesville city, Chesapeake city, Colonial Heights city, Danville city, Hampton city, Hopewell city, Lynchburg city, Newport News city, Norfolk city, Petersburg city, Poquoson city, Portsmouth city, Richmond city, Roanoke city, Salem city, Suffolk city, Virginia Beach city, Williamsburg city

NONMETROPOLITAN COUNTIES
Accomack, Alleghany, Amelia, Appomattox, Augusta, Bath, Bland, Brunswick, Buchanan, Buckingham, Caroline, Carroll, Charlotte, Craig, Cumberland, Dickenson, Essex, Floyd, Franklin, Frederick, Giles, Grayson, Greensville, Halifax, Henry, Highland, King William, King and Queen, Lancaster, Lee, Louisa, Lunenburg, Madison, Mecklenburg, Middlesex, Montgomery, Nelson, Northampton Northumberland, Nottoway, Orange, Page, Patrick, Prince Edward, Pulaski, Rappahannock, Richmond, Rockbridge, Rockingham, Russell Shenandoah, Smyth, Southampton, Surry, Sussex, Tazewell, Westmoreland, Wise, Wythe

WASHINGTON (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES
PMSA Bremerton, WA: Kitsap
PMSA Olympia, WA: Thurston
PMSA Portland-Vancouver, OR-WA: Clark
PMSA Seattle-Bellevue-Everett, WA: Island, King, Snohomish
PMSA Tacoma, WA: Pierce

METROPOLITAN COUNTIES
Benton, Franklin, Spokane, Whatcom, Yakima

NONMETROPOLITAN COUNTIES
Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla, Whitman

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

WEST VIRGINIA (MID-ATLANTIC)

CPI AREAS: COUNTIES
*COUNTY Berkeley, WV: Berkeley
*COUNTY Jefferson, WV: Jefferson

METROPOLITAN COUNTIES
Brooke, Cabell, Hancock, Kanawha, Marshall, Mineral, Ohio, Putnam, Wayne, Wood

NONMETROPOLITAN COUNTIES
Barbour, Boone, Braxton, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jackson, Lewis, Lincoln, Logan, Marion, Mason, Mcdowell, Mercer, Mingo, Monongalia, Monroe, Morgan, Nicholas, Pendleton, Pleasants, Pocahontas, Preston, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt, Wyoming

WISCONSIN (MIDWEST)

CPI AREAS: COUNTIES
PMSA Kenosha, WI: Kenosha
PMSA Milwaukee-Waukesha, WI: Milwaukee, Ozaukee, Washington, Waukesha
MSA Minneapolis-St. Paul, MN-WI: Pierce, St. Croix
PMSA Racine, WI: Racine

METROPOLITAN COUNTIES
Brown, Calumet, Chippewa, Dane, Douglas, Eau Claire, La Crosse, Marathon, Outagamie, Rock, Sheboygan, Winnebago

NONMETROPOLITAN COUNTIES
Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Clark, Columbia, Crawford, Dodge, Door, Dunn, Florence, Fond du Lac, Forest, Grant, Green, Green Lake, Iowa, Iron, Jackson, Jefferson, Juneau, Kewaunee, Lafayette, Langlade, Lincoln, Manitowoc, Marinette, Marquette, Menominee, Monroe, Oconto, Oneida, Pepin, Polk, Portage, Price, Richland, Rusk, Sauk, Sawyer, Shawano, Taylor, Trempealeau, Vernon, Vilas, Walworth, Washburn, Waupaca, Waushara, Wood

WYOMING (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Laramie, Natrona

NONMETROPOLITAN COUNTIES
Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Lincoln, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Teton, Uinta, Washakie, Weston

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

PACIFIC ISLANDS (PACIFIC/HAWAII)

NONMETROPOLITAN COUNTIES
Pacific Islands

PUERTO RICO (SOUTHEAST)

METROPOLITAN COUNTIES
Aguada, Aguadilla, Aguas Buenas, Anasco, Arecibo, Barceloneta, Bayamon, Cabo Rojo, Caguas, Camuy, Canovanas, Carolina, Catano, Cayey, Ceiba, Cidra, Comerio, Corozal, Dorado, Fajardo, Florida, Guayanilla, Guaynabo, Gurabo, Hatillo, Hormigueros, Humacao, Juana Diaz, Juncos, Las Piedras, Loiza, Luquillo, Manati, Mayaguez, Moca, Morovis, Naguabo, Naranjito, Penuelas, Ponce, Rio Grande, Sabana Grand, San German, San Juan, San Lorenzo, Toa Alta, Toa Baja, Trujillo Alt, Vega Alta, Vega Baja, Villalba, Yabucoa, Yauco

NONMETROPOLITAN COUNTIES
Aibonito, Arroyo, Adjuntas, Barranquitas, Ciales, Coamo, Culerbra, Guanica, Guayama, Isabela, Jayuya, Lajas, Lares, Las Marias, Maricao, Maunabo, Orocovis, Patillas, Quebradillas, Rincon, Salinas, San Sebastia, Santa Isabel, Utuado, Vieques

VIRGIN ISLANDS (SOUTHEAST)

NONMETROPOLITAN COUNTIES
Virgin Island

[FR Doc. 95–5457 Filed 3–6–95; 8:45 am]
BILLING CODE 4210–32–C

federal register

Tuesday
March 7, 1995

Part III

Environmental Protection Agency

40 CFR Parts 281 and 282

Hazardous Waste: Iowa State Underground Storage Tank Programs; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–5166–9]

Iowa; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on Iowa's application for final approval.

SUMMARY: The State of Iowa has applied for final approval of its underground storage tank (UST) program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Iowa's application and has reached a final determination that Iowa's underground storage tank program satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to the State of Iowa to operate its program.

EFFECTIVE DATE: Final approval for Iowa shall be effective at 1:00 pm eastern time on May 8, 1995.

FOR FURTHER INFORMATION CONTACT: Lee Daniels, Coordinator, Underground Storage Tank Section, EPA Region 7, 726 Minnesota Ave., Kansas City, Kansas, 66101. Phone: (913) 551–7651.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables EPA to approve state UST programs to operate in the state in lieu of the Federal UST program. To qualify for final authorization, a state's program must be: (1) ''No less stringent'' than the Federal program in leak detection, maintaining records, release reporting, corrective action, tank closure, financial responsibility, new tank standards and the notification requirements of Section 9004(a)(8) of RCRA, 42 U.S.C. 6991c(a)(8); and (2) provide for adequate enforcement (Section 9004(a) of RCRA, 42 U.S.C. 6991c(a)).

B. State of Iowa

On March 17, 1994, Iowa submitted an application for ''complete'' program approval. On April 25, 1994, Iowa submitted H.F. 2118 which amended Iowa Code § 455B.471(6) for inclusion in the application. This bill amended the definition of an ''owner'' of an underground storage tank and provided the conditions under which a ''lender'' might be exempted from that definition. Also, on June 7, 1994 Iowa modified its application so that it is not seeking authorization over Indian lands. Together, these comprise the Iowa application. The Iowa program provides for regulation of both petroleum and hazardous substance tanks. Iowa also regulates farm/residential tanks of 1,100 gallons or less capacity. However, this part of the Iowa program is broader in scope than the Federal program and is not included in this final approval. On August 9, 1994, EPA published a tentative decision announcing its intent to grant Iowa final approval. Further background on the tentative decision to grant approval appears at 59 FR 40507, August 9, 1994.

Along with the tentative determination, EPA announced the availability of the application for public comment. Also, EPA provided notice that a public hearing would be provided only if significant public interest on substantive issues was shown. EPA did receive significant comments on the application and a public hearing was held on December 1, 1994 in Des Moines, Iowa.

C. Public Comments and Hearing

The following summarizes the comments and responds to the significant issues raised by those comments.

Twenty-three written comments were received during the public comment period, which ran from August 9, 1994, when the tentative program approval notice was published, until December 9, 1994. Nine commenters spoke at the public hearing. Commenters included owners of USTs, an association of petroleum marketers, an association of trucking companies and service providers to trucking companies, local government officials and the Iowa Department of Natural Resources (IDNR). The Iowa Comprehensive Petroleum Underground Storage Tank Fund provided a written comment following the public hearing.

The majority of comments concerned four major issues: (1) Whether the IDNR adequately enforces the financial responsibility requirements applicable to UST owners, (2) whether the IDNR adequately enforces the leak detection requirements applicable to UST owners, (3) whether the IDNR wastes resources for site assessments instead of actual cleanups, and (4) whether the IDNR should use risk-based cleanup standards.

Other commenters stated that owners who timely comply with the UST requirements are competitively disadvantaged when the IDNR does not enforce the rules for everyone, or when compliance deadlines are moved. Others criticized the IDNR for specific cleanup requirements imposed on sites which they owned. The IDNR was criticized for the high costs of site assessments and the costs of complying with the IDNR requirements for long-term monitoring after contaminated soils were removed. One commenter cited an example of contamination that recurred after a cleanup due to fluctuating water tables. Others cited diminished property values and lost economic development due to contamination.

While some of the commenters requested that the EPA deny program approval, the petroleum marketers association echoed the four major comments above but specifically requested approval of the Iowa program. However, the marketers association did request that the EPA continue providing the IDNR technical and administrative assistance to improve enforcement of UST regulations and the adoption of risk-based cleanup standards. The trucking association criticized the IDNR for wasting resources without doing enough cleanups and for not using risk-based cleanup standards, but did not request denial of program approval.

At the public hearing and in a written comment, the IDNR specifically addressed the four major issues identified above. However, not all of those four issues are within the scope of the EPA's review for state program approval. For the EPA the sole concerns are whether the state has the legal authorities, the program capability to meet the objectives of the federal UST requirements and provides adequate enforcement of compliance. Thus, even though the EPA encourages the effective use of state cleanup funds, such funds are not required elements for state program approval and Iowa's administration of its state cleanup fund was not reviewed by the EPA for program approval. Similarly, while the EPA encourages states to use risk-based decision-making in the corrective action process, there is no federal requirement for state program approval for any particular methodology. Nonetheless, in order to fully address the public's concerns the EPA has included in this responsiveness summary the IDNR's response to each of the major issues.

With respect to enforcement of the leak detection and financial responsibility requirements, the IDNR noted that the state's UST requirements follow the federal requirements. The federal UST regulation does not require compliance reporting by the owner to the regulating agency, but only that leak detection and financial responsibility records be kept on-site or reasonably accessible. Therefore, for the IDNR the

only clear mechanism to enforce those requirements is on-site inspections of each facility. The IDNR has established an abbreviated enforcement procedure to deal with those specific violations, so that a large number of enforcement actions can be undertaken in a relatively short period of time. With its available resources, the IDNR performs over 400 on-site inspections each year.

In response to the comments alleging waste of cleanup resources, the IDNR attributed many of the public concerns to difficulties the agency has had in identifying the soil and groundwater contamination, and the resulting failure of nearly every remediation system that was installed. As a result, the IDNR is now requiring more detailed assessments of contaminated sites to determine the risks and necessary actions, and to provide assurance that the remediation will be successful.

Concerning risk assessment, the IDNR commented that since 1992 it has been applying a risk-based assessment to set the appropriate standards to protect human health and the environment, and was one of the first states in the nation to do so. Since then, 43 percent of assessed sites have been required to perform some form of remediation, and 57 percent have been allowed to either do nothing or to monitor only. There has been a continuous effort to improve on and reduce the amount of remediation required.

In response to the above comments, the EPA notes that none of the comments identified any problems with the scope of the Iowa UST program or whether the Iowa regulations are less stringent than the federal requirements. Although some commenters identified problems with the adequacy of enforcement of the leak detection and financial responsibility requirements, the EPA is satisfied that the IDNR is using its available resources to adequately enforce these requirements and will continue taking steps to achieve universal compliance at UST facilities in Iowa.

Additionally, the EPA considers the IDNR's efforts to achieve required cleanups to be adequate for program approval, but acknowledges the technical and financial difficulties in achieving cleanups. The IDNR is making progress in improving remediation efficiency through more detailed site assessments and the use of risk based cleanup standards.

Also, the EPA acknowledges that owners of USTs face sometimes enormous financial challenges in complying with the technical operating requirements and in performing required cleanups of contaminated sites. However, those requirements would be the same whether or not EPA approves the Iowa UST program. Further, upon approval the Iowa UST program would operate in lieu of the federal program and owners and operators would look only to the Iowa set of requirements to determine their compliance.

Finally, in response to the suggestion that the EPA should provide technical and administrative assistance to the IDNR, the EPA notes that after program approval the EPA will continue to provide the IDNR such assistance. Also, the EPA/State Memorandum of Agreement that is part of the program approval application provides for continued information exchanges between the EPA and the IDNR to monitor and improve site cleanups and enforcement activities.

D. Decision

I conclude that the State of Iowa's application for final approval meets all the statutory and regulatory requirements established by Subtitle I of RCRA. Accordingly, Iowa is granted final approval to operate its UST program. The State of Iowa now has the responsibility for managing all regulated UST facilities within its borders and carrying out all aspects of the UST program except with regard to Indian lands, where EPA will retain and otherwise exercise regulatory authority. Iowa also has primary enforcement responsibility, although EPA retains the right to conduct inspections under Section 9005 of RCRA, 42 U.S.C. 6991d, and to take enforcement actions under Section 9006 of RCRA, 42 U.S.C. 6991e.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. This approval effectively suspends the applicability of certain Federal regulations in favor of Iowa's program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks in the state. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This action is issued under the authority of Sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6974(b), and 6991c.

Dated: February 7, 1995.

Delores Platt,

Acting Regional Administrator.

[FR Doc. 95–5526 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[FRL–5164–5]

Underground Storage Tank Program: Approved State Program for Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the U.S. Environmental Protection Agency (EPA) to grant approval to states to operate their underground storage tank programs in lieu of the federal program. 40 CFR part 282 codifies EPA's decision to approve state programs and incorporates by reference those provisions of the state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions. This rule codifies in part 282 the prior approval of Iowa's underground storage tank program and incorporates by reference appropriate provisions of state statutes and regulations.

DATES: This regulation is effective May 8, 1995, unless EPA publishes a prior Federal Register document withdrawing this immediate final rule. All comments on the codification of Iowa's underground storage tank program must be received by the close of business April 6, 1995. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of May 8, 1995, in accordance with 5 U.S.C. 552(a).

ADDRESSES: Comments may be mailed to WSTM/RCRA/STPG, Underground Storage Tank Program, U.S. EPA Region

7, 726 Minnesota Ave., Kansas City, Kansas, 66101. Comments received by EPA may be inspected at the above address from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Lee Daniels, Underground Storage Tank Program, U.S. EPA Region 7, 726 Minnesota Ave., Kansas City, Kansas, 66101. Phone: (913) 551–7651.

SUPPLEMENTARY INFORMATION:

Background

Section 9004 of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6991c, allows the U.S. Environmental Protection Agency to approve state underground storage tank programs to operate in the state in lieu of the federal underground storage tank program. EPA published a Federal Register document announcing its decision to grant approval to Iowa elsewhere in this issue of the Federal Register. Approval will be effective on May 8, 1995.

EPA codifies its approval of State programs in 40 CFR part 282 and incorporates by reference therein the state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions. Today's rulemaking codifies EPA's approval of the Iowa underground storage tank program. This codification reflects the state program in effect at the time EPA granted Iowa approval under section 9004(a), 42 U.S.C. 6991c(a) for its underground storage tank program. Notice and opportunity for comment were provided earlier on the Agency's decision to approve the Iowa program, and EPA is not now reopening that decision nor requesting comment on it.

This effort provides clear notice to the public of the scope of the approved program in each state. By codifying the approved Iowa program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in Iowa, the status of federally approved requirements of the Iowa program will be readily discernible. Only those provisions of the Iowa underground storage tank program for which approval has been granted by EPA will be incorporated by reference for enforcement purposes.

To codify EPA's approval of Iowa's underground storage tank program, EPA has added § 282.65 to title 40 of the CFR. Section 282.65 incorporates by reference for enforcement purposes the State's statutes and regulations. Section 282.65 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the underground storage tank program under subtitle I of RCRA.

The Agency retains the authority under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the state authorized analogs to these provisions. Therefore, the approved Iowa enforcement authorities will not be incorporated by reference. Section 282.65 lists those approved Iowa authorities that would fall into this category.

The public also needs to be aware that some provisions of the State's underground storage tank program are not part of the federally approved state program. These non-approved provisions are not part of the RCRA Subtitle I program because they are ''broader in scope'' than Subtitle I of RCRA. See 40 CFR 281.12(a)(3)(ii). As a result, state provisions which are ''broader in scope'' than the federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.65 of the codification simply lists for reference and clarity the Iowa statutory and regulatory provisions which are ''broader in scope'' than the federal program and which are not, therefore, part of the approved program being codified today. ''Broader in scope'' provisions cannot be enforced by EPA; the State, however, will continue to enforce such provisions.

Certification Under the Regulatory Flexibility Act

This rule codifies the decision already made, published elsewhere in this issue of the Federal Register, to approve the Iowa underground storage tank program and thus has no separate effect. Therefore, this rule does not require a regulatory flexibility analysis. Thus, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed or final rule.

This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 282

Environmental protection, Hazardous substances, Incorporation by reference, Intergovernmental relations, State program approval, Underground storage tanks, Water pollution control.

Dated: February 7, 1995.

Delores Platt,

Acting Regional Administrator.

For the reasons set forth in the preamble, 40 CFR part 282 is proposed to be amended as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

Subpart B—Approved State Programs

2. Subpart B is amended by adding § 282.65 to read as follows:

§ 282.65 Iowa State-administered program.

(a) The State of Iowa is approved to administer and enforce an underground storage tank program in lieu of the federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the Iowa Department of Natural Resources, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this Chapter. EPA approved the Iowa program on March 7, 1995 and it was effective on May 8, 1995.

(b) Iowa has primary responsibility for enforcing its underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, as well as under other statutory and regulatory provisions.

(c) To retain program approval, Iowa must revise its approved program to

adopt new changes to the federal subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Iowa obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the Federal Register.

(d) Iowa has final approval for the following elements submitted to EPA in Iowa's program application for final approval and approved by EPA on March 7, 1995. Copies may be obtained from the Underground Storage Tank Program, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand, Des Moines, Iowa, 50319.

(1) *State statutes and regulations.* (i) The provisions cited in this paragraph are incorporated by reference as part of the underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(A) Iowa Statutory Requirements Applicable to the Underground Storage Tank Program, 1994

(B) Iowa Regulatory Requirements Applicable to the Underground Storage Tank Program, 1994

(ii) The following statutes and regulations are part of the approved state program, although not incorporated by reference herein for enforcement purposes.

(A) The statutory provisions include: Code of Iowa, Chapter 455B, Sections 103(4), 109, 111, 112, 475, 476, 477 and 478.

(iii) The following statutory and regulatory provisions are broader in scope than the federal program, are not part of the approved program, and are not incorporated by reference herein for enforcement purposes.

(A) Code of Iowa, Chapter 455B, Sections 113, 114 and 115 insofar as they apply to certified laboratories; 479 insofar as it applies to account dispersion; Chapter 455G, Sections 1–20 insofar as they apply to the comprehensive petroleum underground storage tank fund.

(B) Iowa Administrative Code, Rule 567, Chapter 134.1–5 insofar as they apply to the registration of groundwater professionals; 135.3(4) insofar as it applies to farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(2) *Statement of legal authority.* (i) ''Attorney General's Statement for Final Approval'', signed by the Attorney General of Iowa on December 22, 1993, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(ii) Letter from the Attorney General of Iowa to EPA, dated December 22, 1993, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The ''Demonstration of Procedures for Adequate Enforcement'' submitted as part of the original application in March of 1994, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program Description.* The program description and any other material submitted as part of the original application in March 1994, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 7 and the Iowa Department of Natural Resources, signed by the EPA Regional Administrator on June 22, 1994, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Appendix A to Part 282 is amended by adding in alphabetical order ''Iowa'' and its listing.

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

Iowa

(a) The statutory provisions include Code of Iowa, 1993; Chapter 455B, Jurisdiction of Department:

Section 101—Definitions
Section 103—Director's duties, except for 455B.103(4)
Section 105—Powers and duties of the commission, except for 105(5), 105(11)a(3) and 105(11)b
Section 471—Definitions
Section 472—Declaration of policy
Section 473—Report of existing and new tanks—fee
Section 473A—Petroleum underground storage tank registration amnesty program
Section 474—Duties of Commission—rules
Section 479—Storage tank management fee, except for the 2nd and 3rd sentences

(b) The regulatory provisions include Iowa Administrative Code, 1993, Rule 567, Environmental Protection Commission:

Chapter 131.1—Definitions
Chapter 131.2—Report of Hazardous Conditions
Chapter 133.1—Scope
Chapter 133.2—Definitions
Chapter 133.3—Documentation of contamination and source
Chapter 133.4—Response to contamination
Chapter 133.5—Report to commission
Chapter 135.1—Authority, purpose and applicability
Chapter 135.2—Definitions
Chapter 135.3—UST systems—design, construction, installation, and notification, except for 135.3(4)a, 3(4)b and 3(4)c
Chapter 135.4—General operating requirements
Chapter 135.5—Release detection
Chapter 135.6—Release reporting, investigation, and confirmation
Chapter 135.7—Release response and corrective action for UST systems containing petroleum or hazardous substances
Chapter 135.8—Site cleanup report
Chapter 135.9—Out-of-service UST systems and closure
Chapter 135.10—Laboratory analytical methods for petroleum contamination of soil and groundwater
Chapter 135.11—Evaluation of ability to pay
Chapter 136.1—Applicability
Chapter 136.2—Compliance dates
Chapter 136.3—Definition of terms
Chapter 136.4—Amount and scope of required financial responsibility
Chapter 136.5—Allowable mechanisms and combinations of mechanisms
Chapter 136.6—Financial test of self-insurance
Chapter 136.7—Guarantee
Chapter 136.8—Insurance and risk retention group coverage
Chapter 136.9—Surety bond
Chapter 136.10—Letter of credit
Chapter 136.11—Trust fund
Chapter 136.12—Standby trust fund
Chapter 136.13—Local government bond rating test
Chapter 136.14—Local government financial test
Chapter 136.15—Local government guarantee
Chapter 136.16—Local government fund
Chapter 136.17—Substitution of financial assurance mechanisms by owner or operator
Chapter 136.18—Cancellation or nonrenewal by a provider of financial assurance
Chapter 136.19—Reporting by owner or operator
Chapter 136.20—Record keeping
Chapter 136.21—Drawing on financial assurance mechanisms
Chapter 136.22—Release from the requirements
Chapter 136.23—Bankruptcy or other incapacity of owner or operator or provider of financial assurance

Chapter 136.24—Replenishment of guarantees, letters of credit, or surety bonds.

[FR Doc. 95–5527 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–P

federal register

Tuesday
March 7, 1995

Part IV

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report one revised deferral, totaling $7.3 million, and two revised rescission proposals, totaling $106.7 million.

The revised deferral affects the Department of Health and Human Services. The revised rescission proposals affect the Department of Education and the Environmental Protection Agency.

William J. Clinton

The White House,

February 22, 1995.

BILLING CODE 3110–01–M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

Deferral No.	ITEM	Budgetary Resources
	Department of Health and Human Services	
	Social Security Administration	
D95-6A	Limitation on administrative expenses	7,321
	Total, deferral	7,321

Rescission No.	ITEM	Budgetary Resources
	Department of Education:	
	Office of Elementary and Secondary Education:	
R95-4A	School improvement programs	103,084
	Environmental Protection Agency	
R95-18C-1	Research and development	3,635
	Total, rescissions	106,719

Deferral No. D95-6A

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D95-6, which was transmitted to Congress on October 18, 1994.

This revision increases by $1,735 the previous deferral of $7,318,808 in the Department of Health and Human Services, resulting in a total deferral of $7,320,543. The increase results from a greater-than-anticipated level of unobligated funds being carried over from FY 1994.

Deferral No. 95-6A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Health and Human Services	**New budget authority** ..... $ 97,000,000 (P.L. 103-333)
BUREAU: Social Security Administration	**Other budgetary resources** ..... $ 233,129,554
Appropriation title and symbol: Limitation on administrative expenses 1/ 75X8704	**Total budgetary resources** ..... $ 330,129,554
	Amount to be deferred: Part of year ..... $ _____
	Entire year ..... $ 7,320,543 *
OMB identification code: 20-8007-0-7-651	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual	**Type of budget authority:** [X] Appropriation
[ ] Multi-year: _____ (expiration date)	[ ] Contract authority
[X] No-Year	[ ] Other _____

JUSTIFICATION: This account includes funding for construction, renovation, and expansion of Social Security Trust Fund-owned headquarters and field office buildings. In addition, funds remain available for costs associated with acquisition of land in Colonial Park Estates adjacent to the Social Security Administration complex in Baltimore, MD. In FY 1995, the Social Security Administration has received an approved apportionment for $50,000 to cover potential upward adjustments of prior-year costs related to field office roof repair and replacement projects. Deferred funds are reserved for two purposes: (1) purchase of 9.8 acres of privately-owned land consisting of 14 scattered lots within the Social Security Administration complex. The Federal Government has made a commitment to the original owners to purchase the land and to pay relocation costs contingent upon the owners' decision to sell at some future date; and (2) construction, renovation, and expansion projects when a need for such projects is identified and determined to be necessary for the efficient operation of the Social Security Administration. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1994 (D94-7A).

* Revised from the previous report.

Rescission No. 95-4A

Supplemental Report
Report Pursuant to Section 1012 of Public Law 93-344

This report updates Rescission Proposal No. R95-4, which was transmitted to Congress on February 6, 1995.

This revision to a rescission proposal for the Department of Education, Office of Elementary and Secondary Education, School improvement programs, decreases the amount previously reported from $138,084,000 to $103,084,000. The decrease of $35,000,000 would provide a small number of education infrastructure grants to school districts serving empowerment zones, supplemental empowerment zones, and enterprise communities.

R95-4A

DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

School improvement programs

Of the funds made available under this heading in Public Law 103-333, $103,084,000 are rescinded as follows: from the Elementary and Secondary Education Act, $28,000,000 for part C of title V, $5,899,000 for section 10602, $4,185,000 for part G of title X, and $65,000,000 for title XII: Provided, That notwithstanding sections 12004(b) and 12005(b) of P.L. 103-382, funds remaining available for title XII shall be used for awards only to local educational agencies serving an empowerment zone, a supplemental empowerment zone, or an enterprise community designated by the Department of Housing and Urban Development or the Department of Agriculture, for projects in education facilities within the boundaries of such zone or community.

Rescission Proposal No. R95-4A

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Education	New budget authority..... $ 1,564,877,000 (P. L. 103-333)
BUREAU: Office of Elementary and Secondary Education	Other budgetary resources.. $ 31,000,000
Appropriations title and symbol: School improvement programs 91 5/61000 91 4/61000 9151000	Total budgetary resources... $ 1,595,877,000
	Amount proposed for rescission..... $ 103,084,000 *
OMB identification code: 91-1000-0-1-501	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☒ Annual ☒ Multi-year: September 30, 1996 September 30, 1995 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

*JUSTIFICATION: The amount of $103,084,000 is proposed for rescission from the Ellender Fellowships ($4,185,000), the Instruction in Civics, Government, and the Law ($5,899,000), the Dropout Prevention Demonstrations ($28,000,000), and the Education Infrastructure ($65,000,000) programs. Support of Ellender Fellowship program is not an appropriate Federal responsibility. Other well-established programs have successfully institutionalized law education throughout the country, the same purpose served by the Instruction in Civics, Government, and the Law program. The Dropout Prevention Demonstration program accomplished its purpose in FY 1994, the final planned year. State and local governments have traditionally had the responsibility for providing adequate infrastructure for education. The Administration proposes to retain a small amount of infrastructure funding to support activities in empowerment zones, supplemental empowerment zones, and enterprise communities.

*ESTIMATED PROGRAM EFFECT: Ellender Fellowships and Instruction in Civics, Government, and the Law would be able to continue their programs with continued use of non-Federal funds. Continuation of the Dropout Prevention program would provide non-competitive assistance to incumbent grantees rather than support demonstrations, which have already been funded. Without major new Federal funding, State and local governments would continue to fund school construction and renovation. A targeted program of infrastructure grants to empowerment zones, supplemental empowerment zones, and enterprise communities would assist school districts facing overwhelming construction and renovation needs.

OUTLAY EFFECT: (in thousands of dollars):

1995 Outlay Estimate		Outlay Changes *					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 200
1,591,656	1,579,286 *	-12,370	-70,097	-18,555	-2,062	---	---

* Revised from the previous report.

Rescission No. 95-18C-1

Supplemental Report
Report Pursuant to Section 1012 of Public Law 93-344

This report updates Rescission Proposal No. R95-18C, which was transmitted to Congress on February 6, 1995.

This revision to a rescission proposal for the Environmental Protection Agency's (EPA's) Research and development appropriation substitutes $735 thousand in additional procurement savings for the $735 thousand for agricultural/livestock pollution abatement research previously proposed for rescission. EPA reports that funds for this research were obligated in late- January, before being withheld pending rescission. The total amount proposed for rescission from the Research and development appropriation remains unchanged.

R95-18C-1

ENVIRONMENTAL PROTECTION AGENCY

Research and development

Of the funds made available under this heading in Public Law 103-327, $3,635,000 are rescinded.

Rescission Proposal No. R95-18C-1

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Environmental Protection Agency BUREAU:	New budget authority..... (P.L. 103-327) $ 349,279,000 Other budgetary resources.. $ 50,000,000 Total budgetary resources... $ 399,279,000
Appropriation title and symbol: Research and development 68X0107	Amount proposed for rescission..... $ 3,635,000
OMB identification code: 68-0107-0-1-304 Grant program: ☐ Yes ☒ No	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other _____
Type of account or fund: ☐ Annual ☒ Multi-year: September 30, 1996 (expiration date) ☐ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

*JUSTIFICATION: This proposal would rescind $2.3 million in health effects research, academic training, and neurotoxicity research activities that were fully funded in the President's budget for all activities identified as priority research. In addition, $1.3 million in additional procurement savings is proposed for rescission due to recently enacted procurement reform legislation.

ESTIMATED PROGRAM EFFECT: The rescission of these funds would not affect the accomplishment of the Agency's mission.

OUTLAY EFFECT: (In thousands of dollars):

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
349,483	348,211	-1,272	-1,854	-400	-73	-36	—

* Revised from the previous report.

[FR Doc. 95–5490 Filed 3–6–95; 8:45 am]

BILLING CODE 3110–01–C

federal register

Tuesday
March 7, 1995

Part V

Department of Education

34 CFR Part 75

Direct Grant Programs; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 75

Direct Grant Programs

AGENCY: Department of Education.

ACTION: Optional procedure for conducting fiscal year 1995 grant competitions under the Improving America's Schools Act of 1994.

SUMMARY: The Secretary establishes an optional procedure for conducting fiscal year (FY) 1995 grant competitions under the Improving America's Schools Act of 1994. The Secretary takes this action to reduce the need for Federal regulations, to ensure timely award of grants in FY 1995, and to provide an additional mechanism for awarding grants that addresses Congress' intent in enacting the affected program authorities.

EFFECTIVE DATE: This procedure takes effect April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Steven N. Schatken, Office of the General Counsel, U.S. Department of Education, 600 Independence Avenue SW., Room 5100, FB10–B, Washington, D.C. 20202–2241. Telephone: (202) 401–8300. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Improving America's Schools Act of 1994 (IASA) was enacted on October 20, 1994 (Pub. L. 103–382). The IASA authorizes numerous discretionary grant programs under which the Secretary will be conducting competitions in FY 1995. The Secretary wishes to conduct these grant competitions as quickly as possible so that grantees will have adequate time for planning and preparation before the next school year begins. The Secretary also intends to keep Federal regulation to a minimum under the IASA in order to provide flexibility to State and local governments and other eligible applicants in designing effective programs to serve the intended beneficiaries of these programs.

The Secretary will be using several techniques to meet the goals of fewer regulations and expedited grant awards, including, for some programs, using procedures currently in the Education Department General Administrative Regulations (EDGAR) for programs that do not have regulations. For these programs, EDGAR provides selection criteria for choosing among competing grant applications (34 CFR 75.210). However, the EDGAR selection criteria are necessarily very general, and for some programs the EDGAR criteria may not adequately focus grant applications on specific provisions that are contained in the program statutes that govern the competitions. Therefore, the Secretary establishes the following procedure that may be used to create more targeted selection criteria in appropriate situations. The Secretary will soon publish a separate notice of proposed rulemaking in the Federal Register to amend EDGAR and make this a permanent option in future fiscal years for all of the Department's discretionary grant programs.

Procedure for Establishing Statutory Selection Criteria

Under this procedure, the Secretary may establish selection criteria for evaluating applications by assigning points to particular statutory provisions, such as allowable activities, application content requirements, or other pre-award and post-award conditions. Applications would be evaluated based on how well the applicants address each of those statutory provisions. The Secretary may also include any of the selection criteria in EDGAR (34 CFR 75.210), but the EDGAR criteria would not otherwise apply.

Each of the criteria, whether based on a statutory provision or taken from EDGAR, would be assigned a maximum number of points that an applicant could score under that criterion. The selection criteria would be included in the application package that the Department provides to all applicants.

This procedure applies only to fiscal year 1995 grant competitions under programs that were newly enacted in, or substantially revised by, the IASA. To the extent that any regulations in EDGAR are inconsistent with this procedure, those regulations would not apply if this procedure is used.

Example: A hypothetical program statute creates a discretionary grant program for support of innovative secondary school programs. Among other requirements, the statute provides that each application must describe how the applicant for a grant will address the needs of limited English proficient children.

Under this procedure, the Secretary would create a full set of selection criteria for the fiscal year 1995 grant competition from the statute and EDGAR, with a total maximum score for all of the criteria determined by the Secretary. (Usually, the Department's grant competitions are based on selection criteria that have a total maximum score of 100.) As one of the criteria, the Secretary could evaluate applications based on how well the applicant proposes to meet the needs of limited English proficient children. The Secretary might decide to award up to 10 points for this criterion. Applicants who best addressed the needs of limited English proficient children would score the highest number of points under this criterion.

Waiver of Public Comment

It is the practice of the Secretary to ask for public comment. However, in accordance with section 437(d)(1) of the General Education Provisions Act (20 U.S.C. 1232(d)(1)), the Secretary has determined that, in order to make timely grant awards in fiscal year 1995 under the IASA, it is necessary to waive public comment on this procedure. The Secretary will request public comment on this procedure for future fiscal years in a separate notice of proposed rulemaking.

Paperwork Reduction Act of 1980

This procedure has been examined under the Paperwork Reduction Act of 1980 and has been found to contain no information collection requirements.

Authority: Improving America's Schools Act of 1994 (Pub. L. 103–382).

(Catalog of Federal Domestic Assistance Number does not apply)

Dated: February 28, 1995.

Richard W. Riley,

Secretary of Education.

[FR Doc. 95–5450 Filed 3–6–95; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
March 7, 1995

Part VI

Department of Education

Challenge Grants for Technology in Education; Inviting Applications for New Awards for Fiscal Year 1995; Notices

DEPARTMENT OF EDUCATION

Challenge Grants for Technology in Education

AGENCY: Department of Education.

ACTION: Notice of selection criteria, selection procedures, and application procedures.

SUMMARY: The Secretary establishes selection criteria, procedures for evaluating applications, and procedures for submission of applications under the Challenge Grants for Technology in Education Program. The program provides grants to consortia comprised of one or more local educational agencies and other appropriate entities for the purpose of improving and expanding new applications of technology to strengthen the school reform effort, improve student achievement, and provide sustained professional development of teachers, administrators, and school library media personnel. The Secretary establishes selection criteria and related procedures to make informed funding decisions on applications for technology projects having great promise for improving elementary and secondary education.

EFFECTIVE DATE: The provisions of this notice take effect April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Donald Fischer, Interagency Technology Task Force, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202–5544. Telephone (202) 708–6001. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Challenge Grants for Technology in Education Program is authorized in Title III, section 3136, of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6846).

Under this program the Secretary makes grants to consortia. Each consortium must include at least one local educational agency (LEA) with a high percentage or number of children living below the poverty line, and may include other LEAs, State educational agencies, institutions of higher education, businesses, academic content experts, software designers, museums, libraries, or other appropriate entities.

The Secretary announces in this notice selection criteria for the FY 1995 competition. The program statute (20 U.S.C. 6846(c)) requires the Secretary to give priority in awarding grants to consortia that demonstrate certain factors in their applications. The Secretary carries out this mandate by incorporating the priority factors into the selection criteria. In addition, the Secretary believes that substantive selection criteria specifically framed for this program competition are necessary to enable the Secretary to evaluate how well the applicants address the purpose of the Challenge Grants for Technology in Education Program. The Secretary uses the following selection criteria instead of the selection criteria in the Education Department General Administrative Regulations, 34 CFR 75.200(b)(3) and 75.210.

Selection Criteria

The Secretary uses the following unweighted selection criteria to evaluate applications:

(a) *Significance.* The Secretary reviews each proposed project for its significance by determining the extent to which the project—

(1) Offers a creative, new vision for using technology to help all students to learn challenging standards or to promote efficiency and effectiveness in education; and contributes to the advancement of State and local systemic educational reform;

(2) Will achieve far-reaching impact through results, products, or benefits that are easily exportable to other settings and communities;

(3) Will directly benefit students by integrating acquired technologies into the curriculum to enhance teaching, training, and student achievement or by other means;

(4) Will ensure ongoing, intensive professional development for teachers and other personnel to further the use of technology in the classroom, library, or other learning center;

(5) Is designed to serve areas with a high number or percentage of disadvantaged students or other areas with the greatest need for educational technology; and

(6) Is designed to create new learning communities, and expanded markets for high-quality educational technology applications and services.

(b) *Feasibility.* The Secretary reviews each proposed project for its feasibility by determining the extent to which—

(1) The project will ensure successful, effective, and efficient uses of technologies for educational reform that will be sustainable beyond the period of the grant;

(2) The members of the consortium or other appropriate entities will contribute substantial financial and other resources to achieve the goals of the project; and

(3) The applicant is capable of carrying out the project, as evidenced by the extent to which the project will meet the problems identified; the quality of the project design, including objectives, approaches, evaluation plan, and dissemination plan; the adequacy of resources, including money, personnel, facilities, equipment, and supplies; the qualifications of key personnel who would conduct the project; and the applicant's prior experience relevant to the objectives of the project.

Selection Procedures

The Secretary intends to evaluate applications using unweighted selection criteria. The Secretary believes that the use of unweighted criteria is most appropriate because they will allow the reviewers maximum flexibility to apply their professional judgments in identifying the particular strengths and weaknesses in individual applications. Therefore, the Secretary will not apply the selection procedures in EDGAR, 34 CFR 75.217, which require a rank order to be established based on weighted selection criteria.

The Secretary also believes that due to the highly technical nature of the applications, it will be necessary to obtain clarifications and additional information from applicants during the selection process. In accordance with 34 CFR 75.109(b), an applicant may make changes to an application on or before the deadline date for submission of applications. In accordance with 34 CFR 75.231, the Secretary may request an applicant to submit additional information after the application has been selected for funding. For the purposes of the Challenge Grants for Technology in Education Program, the Secretary also permits an applicant to submit additional information, in response to a request from the Secretary, during the application selection process.

The Secretary will use the following selection procedures for the FY 1995 competition.

In applying the selection criteria, one or more peer review panels of experts will first analyze each application in terms of individual selection criteria. The reviewers assign to each application two separate qualitative ratings based on the extent to which the application has met the two individual selection criteria. The two ratings taken together yield a composite rating, representing each reviewer's total rating of each application. These reviewer ratings for each application are then combined to yield an overall rating for each application. The panels will also identify inconsistencies, points in need

of clarification, and other concerns, if any, pertaining to each application.

The Secretary assigns each application to one of several groups based on the application's overall level of quality. Starting with the highest quality group and moving down in unbroken order, the Secretary then identifies the groups of applications of sufficiently high quality to be considered for funding. The Secretary may request each applicant whose application was identified as being in a group of sufficiently high quality applications to submit additional information or materials to address the concerns and questions, if any, identified by the peer review panels. Such requests are strictly limited to clarifications of a conceptual or technical nature, and are not meant to fill major gaps in information that reviewers identify in applications.

A second peer review panel then reevaluates each application in a group identified as being of sufficiently high quality, taking into account any additional information or materials, to determine the extent to which each application addresses the selection criteria. The Secretary then reassigns each reevaluated application to one of several groups based on the application's overall level of quality.

In the final stage of the selection process, the Secretary selects for funding those applications of highest quality based on the results of the second review panel. The Secretary may also consider the extent to which each application demonstrates an effective response to the learning technology needs of areas with a high number or percentage of disadvantaged students or the greatest need for educational technology.

Application Deadline

In order to ensure timely receipt and processing of applications, the Secretary takes exception to 34 CFR 75.102(b) by requiring that for an application to be considered for funding it must be received on or before the deadline date announced in the application notice published in this issue of the Federal Register. The Secretary will not consider an application for funding if it is not received by the deadline date unless the applicant can show proof that the application was (1) Sent by registered or certified mail not later than five days before the deadline date; or (2) sent by commercial carrier not later than two days before the deadline date. An applicant must show proof of mailing in accordance with 34 CFR 75.102 (d) and (e). Applications delivered by hand must be received by 2:00 p.m. (Washington, D.C. time) on the deadline date. For the purposes of this competition, the Secretary does not apply 34 CFR 102(b) which requires an application to be mailed, rather than received, by the deadline date.

Waiver of Notice of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department to offer interested parties the opportunity to comment on proposed regulations that are not taken directly from statute. Ordinarily, this practice would have applied to the selection criteria, selection procedures, and application procedures in this notice. However, in order to make timely grant awards in fiscal year (FY) 1995, the Assistant Secretary, in accordance with section 437(d)(1) of the General Education Provisions Act, has decided to issue this notice of selection criteria, selection procedures, and application procedures, which will apply only to the FY 1995 grant competition.

Paperwork Reduction Act of 1980

These selection criteria contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department will submit a copy of these selection criteria to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

The Department uses the information to make informed evaluations of grant applications. Annual public reporting burden for this collection of information is estimated to be as follows:

(1) Selection criteria—average 24 hours per response for 500 respondents.

These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, D.C. 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12373 and the regulations in 34 CFR Part 79. The objective of the executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 6846.

(Catalog of Federal Domestic Assistance Number 84.303, Challenge Grants for Technology in Education)

Dated: March 3, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 95–5707 Filed 3–6–95; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No. 84.303]

Challenge Grants for Technology in Education; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Purpose of Program: The Challenge Grants for Technology in Education Program provides grants to consortia that are working to improve and expand new applications of technology to strengthen the school reform effort, improve student achievement, and provide sustained professional development of teachers, administrators, and school library media personnel.

Eligible Applicants: Only consortia may receive grants under this program. Consortia shall include at least one local educational agency (LEA) with a high percentage or number of children living below the poverty line. They may also include other local educational agencies, State educational agencies, institutions of higher education, businesses, academic content experts, software designers, museums, libraries, and other appropriate entities.

Note: In each consortium a participating LEA shall submit the application on behalf of the consortium and serve as the fiscal agent for the grant.

Deadline for Receipt of Applications: June 2, 1995

Requested Deadline for Receipt of Letters of Intent to Apply: April 4, 1995

Deadline for Intergovernmental Review: August 1, 1995

Applications Available: March 13, 1995

Available Funds: $27,000,000

Estimated Range of Awards: $500,000 to $3,000,000 per year

Estimated Average Size of Awards: $1,000,000 per year

Estimated Number of Awards: 14–18

Project Period: 5 years

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75 (except 34 CFR 75.102(b), 75.200(b)(3), 75.210, and 75.217), 77, 79, 80, 81, 82, and 85.

Other Requirements: The requirements in the notice of selection criteria, selection procedures, and application procedures published in this issue of the Federal Register.

Supplementary Information: The Challenge Grants for Technology in Education Program is authorized under Title III, section 3136, of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6846). This FY 1995 competition supports the first grants under the new program.

As catalysts for change, grants under this program will support communities of educators, parents, industry partners, and others who are working to transform their schools into information-age learning centers. These challenge grants will support the development and innovative use of technology and new learning content in specific communities. Each effort should clearly focus on integrating innovative learning technologies into the curriculum to improve learning productivity in the community.

The Secretary believes that the information superhighway is creating new possibilities for extending the time, the place, and the resources for learning. Challenge grant communities can use it to develop first-class learning environments that provide affordable access to quality education and training. Especially promising possibilities are anticipated from a creative synthesis of ideas generated by educators and software developers, telecommunications firms and hardware manufacturers, entertainment producers, and others who are extending the possibilities for creating new learning communities.

Challenge grant communities need not be limited by geography. The information superhighway can be used to create virtual learning communities linking schools, colleges, libraries, museums, and businesses across the country or around the world. Students of all ages, no matter where they live, could tap vast electronic libraries and museums containing text and video images, music, art, and language instruction. They could work with scientists and scholars around the globe who can help them use mapping tools, primary historical documents, or laboratory experiments to develop strong research and problem solving skills.

The Secretary encourages each community to view this competition as an opportunity to act on its most ambitious vision for education reform. It is essential, however, to guard against a future in which some communities have access to vast technological resources, while others do not. Low-income neighborhoods and other areas with the greatest need for technology should not be left behind in the acquisition of knowledge and skills needed for productive citizenship in the 21st century. A failure to include those communities will put their future, and the future of the country, at risk. For this reason, the Secretary gives special consideration to applications from consortia which are developing effective responses to the learning technology needs of areas with a high number or percentage of disadvantaged students or the greatest need for educational technology.

Note: The Secretary encourages, but does not require, prospective applicants to submit a letter of intent to apply, prior to submitting an application. The Secretary requests the information in this letter in order to help the Secretary identify at the earliest possible stage of the competition the project characteristics for which peer reviewers with appropriate qualifications will need to be enlisted. The Secretary requests that prospective applicants limit their letters to three double-spaced pages. The letter should outline key elements of the proposed effort, including the educational needs and opportunities to be addressed, the concept for responding to those needs, the proposed technologies and applications to be used, and a general estimate of budget purposes. An applicant that does not submit a letter of intent to apply is in no way at a competitive disadvantage with respect to applicants submitting the requested letter. The Secretary requests that letters of intent to apply be submitted for receipt by April 4, 1995.

Project Activities

The statute authorizes the use of funds for activities similar to the following activities:

(a) Developing, adapting, or expanding existing and new applications of technology to support the school reform effort.

(b) Funding projects of sufficient size and scope to improve student learning and, as appropriate, support professional development, and provide administrative support.

(c) Acquiring connectivity linkages, resources, and services, including the acquisition of hardware and software, for use by teachers, students, and school library media personnel in the classroom or in school library media centers, in order to improve student learning by supporting the instructional program offered by such agency to ensure that students in schools will have meaningful access on a regular basis to such linkages, resources, and services.

(d) Providing ongoing professional development in the integration of quality educational technologies into school curriculum and long-term planning for implementing educational technologies.

(e) Acquiring connectivity with wide area networks for purposes of accessing information and educational programming sources, particularly with institutions of higher education and public libraries.

(f) Providing educational services for adults and families.

Selection Criteria

In evaluating applications for grants under this program competition, the Secretary uses the following unweighted selection criteria, as described in the notice of selection criteria, selection procedures, and application procedures for this program published elsewhere in this issue of the Federal Register and repeated below:

(a) *Significance.* The Secretary reviews each proposed project for its significance by determining the extent to which the project—

(1) Offers a creative, new vision for using technology to help all students learn to challenging standards or to promote efficiency and effectiveness in education; and contributes to the advancement of State and local systemic educational reform;

(2) Will achieve far-reaching impact through results, products, or benefits that are easily exportable to other settings and communities;

(3) Will directly benefit students by integrating acquired technologies into the curriculum to enhance teaching, training, and student achievement or by other means;

(4) Will ensure ongoing, intensive professional development for teachers and other personnel to further the use of technology in the classroom, library, or other learning center;

(5) Is designed to serve areas with a high number or percentage of disadvantaged students or other areas with the greatest need for educational technology; and

(6) Is designed to create new learning communities, and expanded markets for high-quality educational technology applications and services.

(b) *Feasibility.* The Secretary reviews each proposed project for its feasibility by determining the extent to which—

(1) The project will ensure successful, effective, and efficient uses of technologies for educational reform that

will be sustainable beyond the period of the grant;

(2) The members of the consortia or other appropriate entities will contribute substantial financial and other resources to achieve the goals of the project; and

(3) The applicant is capable of carrying out the project, as evidenced by the extent to which the project will meet the problems identified; the quality of the project design, including objectives, approaches, evaluation plan, and dissemination plan; the adequacy of resources, including money, personnel, facilities, equipment, and supplies; the qualifications of key personnel who would conduct the project; and the applicant's prior experience relevant to the objectives of the project.

Application Deadline

In order to ensure timely receipt and processing of applications, the Secretary requires that an application must be received on or before the deadline date announced in this application notice. The Secretary will not consider an application for funding if it is not received by the deadline date unless the applicant can show proof that the application was (1) Sent by registered or certified mail not later than five days before the deadline date; or (2) sent by commercial carrier not later than two days before the deadline date. An applicant must show proof of mailing in accordance with 34 CFR 75.102 (d) and (e). Applications delivered by hand must be received by 2:00 p.m. (Washington, DC time) on the deadline date. For the purposes of this program competition, the Secretary does not apply 34 CFR 75.102(b) which requires an application to be mailed, rather than received, by the deadline date.

Briefing for Prospective Applicants

A briefing for prospective applicants is scheduled from 9:30 a.m. to 12:30 p.m. on Friday, March 17, 1995, at the Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, VA 22202–3564 (near National Airport in metropolitan Washington, DC). Telephone (703) 413–5500. No preregistration is required. Prospective applicants unable to attend this briefing may access a summary of questions and answers about the competition from the Department of Education's On-Line Library by using the Department's WWW Server at URL http://www.ed.gov/ or by using the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). For additional help accessing the On-Line Library, call 1–800–USA–LEARN. To receive a hard copy of the summary call (202) 708–6001.

For Applications or Information Contact: Telephone 1–800–USA–LEARN (1–800–872–5327). Individuals may also contact the Interagency Technology Task Force, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202–5544. Telephone (202) 708–6001. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between the hours of 8 a.m. and 8 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Information about the Department's funding opportunities, including copies of the application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 6846.

Dated: March 3, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 95–5706 Filed 3–6–95; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
March 7, 1995

Part VII

The President

Proclamation 6774—Save Your Vision Week

Federal Register
Vol. 60, No. 44
Tuesday, March 7, 1995

Presidential Documents

Title 3—

The President

Proclamation 6774 of March 2, 1995

Save Your Vision Week, 1995

By the President of the United States of America

A Proclamation

Sight is a precious gift—one that we cannot afford to take for granted. To ensure that we enjoy a healthy view of the world for many years to come, all of us must make certain our eyes receive good care and attention throughout our lives.

Americans can take steps to guard their vision on a daily basis, while at home and on the job. Using face masks, goggles, or safety glasses can protect our eyes from the dangers of potentially harmful chemicals or machinery, and the appropriate protective eyewear is critical while playing sports. But perhaps the easiest and most effective way that we can protect our sight is with comprehensive eye examinations. Early eye tests can help secure good vision for our children from the start. And with regular eye exams, the threat of vision loss does not have to be a normal part of aging.

For Americans at special risk, preventive care takes on added importance. The 14 million individuals nationwide who have diabetes face the possibility of developing diabetic eye diseases, the leading cause of blindness among working-aged Americans. This condition may show no symptoms—even in advanced stages—and it must be detected as soon as possible to prevent vision loss.

Glaucoma, another potentially blinding eye disease, can be controlled when detected early. Approximately 3 million Americans suffer from this disease, which strikes silently, often without pain or noticeable symptoms. Especially at risk are African Americans age 40 and older and all people age 60 and older.

To remind Americans of how they can protect their eyesight, the Congress, by joint resolution approved December 30, 1963 (77 Stat. 629; 36 U.S.C. 169a), has authorized and requested the President to proclaim the first week in March of each year as ''Save Your Vision Week.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week beginning March 5, 1995, as Save Your Vision Week. I urge all Americans to participate by making eye care and eye safety an important part of their lives. I invite eye care professionals, the media, and all public and private organizations committed to the goals of sight preservation, to join in activities that will make Americans more aware of the steps they can take to preserve their vision.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of March, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 95–5793
Filed 3-6-95; 11:38 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 60, No. 44

Tuesday, March 7, 1995

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	**202–523–5227**
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Code of Federal Regulations

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Laws

Public Laws Update Service (numbers, dates, etc.)	**523–6641**
Additional Information	**523–5230**

Presidential Documents

Executive orders and proclamations	**523–5230**
Public Papers of the Presidents	**523–5230**
Weekly Compliation of Presidential Documents	**523–5230**

The United States Government Manual

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Other Services

Data base and machine readable specifications	**523–3447**
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Legal staff	**523–4534**
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FEDERAL REGISTER PAGES AND DATES, MARCH

11017–11608.....1
11609–11896.....2
11897–12102.....3
12103–12394.....6
12395–12658.....7

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6772.....11609
6773.....12101
6774.....12657
Administrative Orders:
Memorandums:
March 2, 1995 12393

5 CFR

362.....11017
532.....12395, 12396
1300.....12396
Ch. LXXVII.....12396
Proposed Rules:
Ch. XIV 11057

7 CFR

29 .....12398, 12399, 12400
51.....11242
56.....12401
58.....11246
354.....11897
989.....12403
1942.....11019
Proposed Rules:
51.....11918
58 .....11919, 12154, 12156

9 CFR

77.....11898
Proposed Rules:
102.....12159, 12162
104.....12159
105.....12159
114.....12162
116.....12159

12 CFR

543.....12103
552.....12103
571.....12103
Proposed Rules:
7.....11924
31.....11924

13 CFR

Proposed Rules:
120.....11941
122.....11941

14 CFR

11.....12034, 12108
25.....11194
39 .....11020, 11611, 11613, 11615, 11617, 11619, 11621, 11623, 12406, 12407, 12408, 12410, 12411, 12413, 12414
61.....11254
71.....11625, 12108
97.....12109, 12110
121.....11194, 12034
135.....11194
1241.....11022
Proposed Rules:
33.....12360
39 .....11635, 11637, 11942, 11944, 11945
71.....11057

15 CFR

925.....12592
Proposed Rules:
905.....11947

16 CFR

Proposed Rules:
1700.....12165

17 CFR

239.....11876
270.....11876, 11887
274.....11876
400.....11022
401.....11022
402.....11022
403.....11022
404.....11022
405.....11022
450.....11022
Proposed Rules:
239.....11890
270.....11890
274.....11890

20 CFR

Proposed Rules:
200.....11639
404.....12166
416.....12166

21 CFR

173.....11899
450.....11026
510.....11027
558.....11027, 11028

24 CFR

15.....11901
243.....11828
290.....11844
760.....11828
813.....11626
886.....11844
888.....12594
889.....11828
890.....11836
905.....11626
908.....11626
913.....11626
3500.....11194
Proposed Rules:
888.....11870

26 CFR

1 .....11028, 11906, 12415

Proposed Rules:

1 .....11059, 11060, 11195, 11950, 12034

28 CFR

0.....11906

29 CFR

1910.....11194
1915.....11194
1926.....11194
1952.....12416, 12417
2509.....12328

Proposed Rules:

1952.....12488

30 CFR

Proposed Rules:

925.....11640

32 CFR

199.....12419

Proposed Rules:

209.....11642

33 CFR

100.....11629
165.....12112

Proposed Rules:

117.....12178
402.....11643

34 CFR

3.....11907
75.....12096, 12648

39 CFR

3001.....12113, 12116

Proposed Rules:

111.....12490

40 CFR

52 .....12121, 12123, 12125, 12438, 12442, 12446, 12451, 12453, 12459
58.....11907
63.....11029
70.....12128, 12478
81.....12453, 12459
180.....11029, 11032
281.....12630
282.....12630
721.....11033

Proposed Rules:

51.....12492
52 .....12180, 12184, 12185, 12519, 12520
58.....12492
70.....12521
81.....12520
85.....12185
148.....11702
194.....11060
261.....12525
266.....11702
268.....11702
271.....11702, 12525
302.....12525

42 CFR

485.....11632
486.....11632

Proposed Rules:

65a.....12525

43 CFR

Public Land Orders:

7100.....12592
7117.....11045
7118.....11046
7119.....11633
7120.....11633

44 CFR

152.....11236

45 CFR

Proposed Rules:

1180.....12186

46 CFR

Proposed Rules:

67.....12188

47 CFR

32.....12137
36.....12137
65.....12137
73 .....11909, 11910, 11911

Proposed Rules:

2.....11644
63.....11644
64.....12529
73.....12530

48 CFR

2.....12366, 12384
3.....12366
4.....12366, 12384
5.....12366, 12384
6.....12366
7.....12384
8.....12366, 12384
9.....12366, 12384
12.....12384
13.....12366
14.....12384
15.....12366, 12384
16.....12366, 12384
22.....12366
23.....12366
25.....12366
27.....12366
28.....12366
29.....12366
32.....12366, 12384
36.....12366
41.....12366
42.....12366
43.....12366
44.....12366
45.....12366, 12384
46.....12366
47.....12366
49.....12366
52.....12366, 12384
53.....12366, 12384
701.....11911
703.....11911
715.....11911
724.....11911
731.....11911
752.....11911
927.....11812
952.....11812
970.....11812
1837.....11634

Proposed Rules:

Ch. I.....11198
45.....12530
52.....12530
933.....11646
970.....11646

49 CFR

1.....11046
107.....12139
218.....11047
393.....12146
571.....11913
575.....11913
653.....12296
654.....12296, 12298

Proposed Rules:

234.....11649
571.....12192

50 CFR

17.....12483
204.....11050
646.....12592
672 .....11915, 12149, 12152
673.....11054
675 .....11915, 12149, 12487
676.....11916, 12152

Proposed Rules:

17.....11768, 12531
222.....11951
663.....11062